# Manuale di Diritto Canonico

SOLEMN MASS AT ROME IN THE NINTH CENTURY

*Frontispiece*

# PREFACE.

In the hope that these Short Manuals may contribute in some small degree to help forward that unity for which Christ prayed, by diminishing the prejudice, misunderstanding, and ignorance which is so largely responsible for the present divided state of Christendom, the present volume containing the first series is offered to the public.

We have it on the authority of Christ Himself that He came into the world to be at once the Way, the Truth, and the Life, and that He left it to His Church to carry on the work which He began. It is, therefore, and must ever be the office of the Church to hold Him up to the end of time as the Way, the Truth, and the Life.

In order to manifest Christ as the Way to God, the Church is called upon to be itself the commonwealth of righteousness, the light of the world, the reflection of Him who is the true Light.

In order to display Him as the Truth, the Church is appointed to be the pillar and ground of the truth, handing down through the ages the deposit of faith once for all delivered to the saints.

In order to show forth Christ as the Life, the Church has committed to it the work of communicating spiritual life to others, through prayer and through the sacraments.

This threefold office of the Church involves discipline, Church government, and sacramental administration. For without discipline the Church would soon cease to be the

commonwealth of righteousness and the light of the world; without Church government it would drift into an ever-changing School of thought, a mere reflection of current opinion on religious matters; without the sacraments there would be neither any implanting nor increase of spiritual life.

Under the guidance of the Divine Spirit a large body of laws dealing with each of these subjects has grown up in the course of time. These it is the business of the canonist to collect, to arrange, to reconcile, to preserve. The present volume is an attempt to do this for one of these subjects —the Sacraments. It is proposed to follow it up by others dealing respectively with Discipline and Church government, and then to add a fourth dealing with the modern sphere of their exercise, the parish, and with the liturgical discipline rendered necessary by the upgrowth of the parochial as opposed to the more ancient collegiate and episcopal system.

The author has made it a first principle to avoid everything of a controversial character. As a rule the spiritual instincts of all who have realised the claims which Christianity makes upon them, when not subordinated to temporal considerations, are more generous than their definitions; and the general effect of controversy is to strengthen indeed the controversialist in his opinion, but to strengthen also those who differ from him in theirs. Where differences among authorities point to a difference of rule or practice, an endeavour has been made to trace historically the origin and growth of the difference.

As these Manuals are specially intended for English readers, special prominence has been given in them to English Canon Law. For the same reason it has been thought well to give the authorities quoted as far as possible in an English dress, not because the Latin and Greek which they use is generally hard in itself, but because it is sometimes difficult to follow for those not accustomed to technical language.

The author embraces the opportunity to thank all who have directly or indirectly aided him in his task, more particularly the Very Reverend Monseignor Grainger of the Presbytery, Exmouth, who has at all times given him the free use of his library, the Reverend J. R. Madan, of St. Joseph's Mission to the Maoris, for many useful hints, and Mrs. Wroe, of Chorlton on Medlock, who has kindly supplied the drawing for the frontispiece. Above all, he desires to express his gratitude to the Giver of all good things for giving him health and strength to complete this volume.

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# SHORT MANUALS OF CANON LAW.

## I.

## THE SACRAMENTS GENERALLY.

IN THE FOLLOWING PAGES

*H. & S.* means Haddan and Stubbs' Councils and Ecclesiastical Documents 1873.

*Gratian* means the Decretum Gratiani, compiled about the year 1144 A.D.

*Decret.* means the Decretals of Gregory IX., published A.D. 1234.

*Sext.* means Liber Sextus of Boniface VIII., published A.D. 1298.

The numbers prefixed to the Constitutions of English archbishops are those which they bear in the English Edition of John Johnson, published A.D. 1720-1.

The numbers after Lynd. refer to the pages in the edition of Lyndwood published at Oxford, 1679.

For convenience of reference to Johnson, Egbert's Excerptions are dated A.D. 740, but excepting the first twenty these extracts do not appear to have been promulgated in Egbert's time.

### MEANING AND USE OF THE TERM.

1. The term Sacrament was in early times used to express the military oath which was the sign or pledge of the soldier's allegiance (1), or the money paid into court which was the security that the judgment given in a suit would be carried into effect (2). It was then applied amongst Christians to the solemn profession made at baptism by the soldier of the cross

(1). Concil. Tolet. VIII. A.D. 653, Can. 2 ap. Gratian. Caus. XXII. Qu. 1, c. 1: Every act which conciliates the hearts of friends becomes then more lasting when it is confirmed by the bond of an oath (vinculo sacramenti). Devoti Inst. Lib. II. Tit. II. c. 1.

(2). Devoti l.c. Liebermann Inst. Theol. vi. 3.

which was the pledge of his fidelity to Christ (3), and afterwards in a wider sense to any outward and visible sign which serves as a shell to enclose a sacred kernel and is at once the security for the reception of some spiritual gift (4) and also the means of conveying it to the soul (5).

2. Since every good gift comes from God (6), outward signs can only then be effective to convey inward graces to the soul when God works through them (7). Hence every sacrament requires a divine institution or at least a divine co-operation. A sacrament may nevertheless be an effectual sign of grace, which has been instituted for this purpose either (1) directly by Christ as the sacraments of baptism and the Eucharist were; or (2) indirectly in pursuance of Christ's instructions to the Apostles

(3). In this sense Pliny, x. 96, says that the "Christians bound themselves with a solemn profession (sacramento se obstrinxerunt) not to commit theft, murder or adultery."

(4). Augustin ap. Gratian III. Dist. II. c. 32 : Invisibilis gratiae visibilis forma where forma is defined to be sacrum signum, or sacramentum, *i. e.* the sacramental sign. *Id. Ibid.* c. 33 : The sign or pledge is the reality other than the impression made on the senses which causes of itself some other thing to come to the receiver's knowledge (Signum est res praeter speciem quam ingerit sensibus, aliud aliquid ex se faciens in cognitionem venire, *i.e.* the superphenomenal reality which produces a sacramental effect whilst the phenomena or attributes strike the senses). Augustin *Ibid.* 72, and Ambros, *Ibid.* 74, explain that this res is a real thing (res) and not simply a figure (figura). Hilary, *Ibid.* 79, calls it a real verity (veritas) since the Body and Blood of Christ are believed to be there in truth. Lanfranc, *Ibid.* c. 48, Lynd. 39, 9 and 43 : Sacramentum est materiale elementum extrinsecus oculis suppositum ex institutione significans, ex similitudine repraesentans, ex sanctificatione aliqua gratiam conferens.

(5). Pseudo-Gregory ap. Gratian Can. I. Qu. 1, c. 84 : A sacrament consists in some observance in which a thing is so treated (cum res ita gesta sit) that it is made to signify something which must be received in a holy sense (quod sancte accipiendum est). Lynd. 44, 45.

(6). James I. 17.

(7). Augustin, ap. Gratian Can. I. Qu. 1, c. 30 : A stone cannot produce fruit out of water, and if water passes by stone-conduits to seed-beds it gets nothing from the stone, yet the garden brings forth much fruit. Col. I. 27 ; I. Cor. III. 7, *Id. Ibid.* c. 88 : and III. Dist. IV. 39 ; The gifts of God come to those who receive them with faith, even at the hands of one who is as Judas was.

as the sacrament of unction appears to have been (8); or (3) remotely as some of the so-called lesser sacramentals used in particular branches of the Church appear to have been in execution of the authority given to the Church by its Founder. All of these, being means of grace, are included in the term sacrament in a general sense.

3. In a narrower sense the lesser sacramentals, which are not of universal observance or are not directly means of grace, are excluded from the meaning of the term, and the word is confined to the greater sacraments common to the whole Church which were directly or indirectly instituted by Christ (9). These include (1) necessary sacraments which originate and keep up the spiritual life, such as baptism and the Eucharist; (2) supplementary sacraments, which either replace the effect of a necessary sacrament when lost, such as penance, or else perfect it when it has been imperfectly received, such as confirmation and extreme unction, which perfect baptism and penance respectively; and (3) voluntary sacraments in which certain states of life, which it is at the option of individuals to embrace or not, convey grace to the soul, such as order and matrimony.

4. In a still more restricted sense the term sacrament is confined to sacraments directly ordained by Christ and generally

(8). Gousset, Théologie Dogmatique II. 261, gives a definition of a sacrament similar to that given above, and states, p. 267, that it is not contrary to the Tridentine definitions, to hold that some of the seven sacraments were only indirectly instituted by Christ. Lynd. 42, says that sacraments are either (1) those which give an increase of dignity, such as confirmation and order, or (2) those which are necessary, such as baptism and marriage, or (3) those which are means of grace, such as the Eucharist, penance, and unction. The two first can only be administered by a bishop, the two next by anyone, the last three only by one who has jurisdiction.

(9). Lynd. 328: Christ's passion is the only remedy for all sin whether actual or original; but the benefit of this passion is received in the sacraments of the Church. Wherefore no man can be rendered whole from actual or original sin without the reception of the sacraments, either actually if he have the opportunity of so receiving them, or intentionally if necessity and not contempt of religion hinders the reception of them. Augustin ap. Gratian III. Dist. IV. c. 34; Innocent III. in Decret. Lib. III. Tit. XLIII. c. 2; Liebermann VI. 35.

necessary for salvation. In this sense there are universally admitted to be two, viz., baptism (10) and the Eucharist (11). In respect of their necessity a distinction arises between the two in that baptism is necessary *de necessitate medii*, or as a means of salvation, whereas the Eucharist is necessary *de necessitate praecepti*, or in obedience to a divine precept (12). Without baptism there can be no new life (13); the Eucharist is such an integral part of the Christian dispensation that no one who rejects it can continue to live.

5. For those who by a sin unto death (14) have cut themselves off from the life of grace a third sacrament is also necessary either actually, or in intention if it cannot be actually had, viz. penance. Since however penance is not universally but only in certain cases necessary for salvation, it may be looked upon as a sacrament which acts as a substitute for a second baptism, and may be said to be supplementarily necessary. There are two other supplementary sacraments, but supplementary in the sense of suppletory, viz. (1) confirmation (15) which is the completion of baptism, and (2) the anointing of the sick which is the completion of penance (16). All of these supplementary sacraments are bestowed by imposition of hands as the sacramental sign, and two of them by the particular form of imposition of hands known as anointing. Hence having regard to the matter of sacraments, they are sometimes spoken of as being three, viz. baptism, the Eucharist, and unction (17).

6. There are two states of life which carry with them sacra-

(10). Matth. xxviii. 19.

(11). Matth. xxvi. 26.

(12). On this distinction see Stillingfleet, Grounds of Prot. Religion, Part I. c. II. p. 51; Bramhall, Schisms Guarded, Part. I. p. 492, Vol. II. Oxf. 1842.

(13). John III. 5; Lynd. 328, quoted above.

(14). 1 John, v. 16.

(15). Cyprian, Ep. 71, 1, calls confirmation a sacrament. Pseudo-isidor. ap. Gratian III. Dist. v. c. 4, calls it the sacrament of the imposition of hands. Innocent III. in Decret. Lib. I. Tit. xv. § 1.

(16). Innocent, A.D. 416, ap. Gratian I. Dist. xcv. c. 5, calls extreme unction a kind of sacrament.

(17). Tertullian De Praescrip. c. 40, says that the heretics imitate the rites of the Christians, and then enumerates baptism, unction, and the

mental graces, viz. order ([18]) and matrimony ([19]). These are called voluntary sacraments ([20]) because they are voluntary for individuals, although for the Church as a whole they are necessary. Of the two, order is said to be the sacrament of the perfect, matrimony the sacrament of the imperfect ([21]). Owing to the mystic value of the number seven it has been the custom in most countries of the East as well as the West to speak of the sacraments as seven in number ([22]), but the enumeration of the seven is not everywhere uniform ([23]), neither do they all stand on the same level. In this country seven have been counted at least from the 8th century downwards ([24]), but lat-

Eucharist. De resurrect. 8, Pseudo-Gregory ap. Gratian I. Caus. I. Qu. I. c. 84 § 3, Isidor. De Offic. c. 39, Raban. De Cler. Inst. I. 24, enumerate three.

(18). Augustin ap. Gratian Caus. I. Qu. I. c. 87 and 97, and III. Dist. IV. c. 32 ; Zosimus, A.D. 418 *Ibid.* I Dist. LXXV. c. 5.

(19). Matrimony is called a sacrament by Isidor. De Orig. Offic. 20, 11.

(20). Gratian Caus. I. Qu. I. c. 39 ; Const. 9 Peckham, A.D. 1281.

(21). Const. 9 Peckham, A.D. 1281.

(22). It was the teaching of Luther that there were three sacraments, or rather one sacrament and three sacramental acts. Melancthon acknowledged three. Zwingle allowed marriage to be a sacrament. Calvin taught two sacraments only, see Devoti. Inst. Proleg. § 15. An Eastern Council in 1638, consisting of three patriarchs and twenty bishops, denounced Anathema upon Cyril Lucar, fabricator of new doctrines, who denied that the seven sacraments, viz. baptism, chrism, penance, the Eucharist, the priesthood, extreme unction, and marriage were instituted by Christ.

(23). According to Maclean's The Catholicos of the East, the Assyrians enumerate baptism, the Eucharist, order, the holy leaven, penance, unction, the sign of the cross.

(24). Laws of Satisfaction, A.D. 725. Const. 2 Otho, A.D. 1237 : We ordain that the sacraments of the Church in which, as in heavenly vessels, the means of salvation are contained . . . . be purely and devoutly administered . . . . For the sake of the simple, we have thought fit to ordain which and how many sacraments they are. They are : baptism, confirmation, penance, the Eucharist, extreme unction, matrimony, and order. Synod of Chichester, A.D. 1246 in Wilkins I. 688 : There are seven ecclesiastical sacraments, baptism for beginners [Gratian III. Dist. IV. c. 142], confirmation [*Ibid.* III. Dist. V. c. 2] for fighters, the Eucharist for travellers [Gratian Caus. XXVI. Qu. VI. c. 7], penance for the returning [*Ibid.* Caus. XXVI. Qu. VII. c. 4], extreme unction for the departing [Caus. XXVI. Qu. VII. c. 1], order for those ministering, and wedlock for toilers. Const. 1

terly custom has inclined to take the term sacrament in its most restricted sense and to speak of the sacraments as two only.

7. Grace may nevertheless be conveyed by other means besides the seven sacraments. Some of these means, such as the washing of the feet ([25]), the agape or benediction-bread, and the ministry of the word or preaching ([26]), were directly ordained by Christ, and contain the three requisites of a sacrament, although they are not universally necessary for salvation. Others are of ecclesiastical appointment, such as the use of holy water and signing with the sign of the cross, and these derive their sacramental value from the Church's intercession. If neither sacraments nor lesser sacramentals are available, grace may be had, without any visible means at all ([27]), by an inward reception or full belief in and desire for them.

Peckham, A.D. 1281 : The most High hath created a medicine for the body of man which was taken out of the earth, reposited in seven vessels, *i.e.* in the seven sacraments of the Church. Const. 9 : There are seven sacraments of grace, of which the prelates of the Church are dispensers, and five thereof every Christian ought to receive, viz. baptism, confirmation, penance, the Eucharist in its proper season, and extreme unction . . . . There are two other sacraments, order and matrimony. The first is proper for the perfect, the other in the times of the New Testament to the imperfect only. Lynd. 43 says : Baptism is the sacrament of faith, confirmation of hope, the Eucharist, of charity, penance of justice, and extreme unction of perseverance, order of prudence, matrimony of temperance. See Gratian Caus. I. Qu. I. c. 39, Schol. Ayliffe, 475, says : Sacraments are of two kinds, (1) necessary, (2) voluntary. Five of the seven are necessary, two are voluntary.

(25). John xiii. 16.

(26). 1 Cor. i. 17 : Christ sent me not to baptise, but to teach. Augustin, ap. Gratian, Caus. I. Qu. I. c. 94 : He is not less guilty who carelessly hears the word of God than he who negligently permits the Body of Christ to fall to the ground. *Ibid.* c. 54.

(27). Augustin, ap. Gratian, III. Dist. IV. c. 34 : Baptism is then invisibly bestowed when necessity and not contempt of religion excludes its ministration. Innocent III. in Decret. lib. III. Tit. XLII. c. 2 ; Lynd. 43 : With adults and discrete persons there may be salvation without any one of these five sacraments being received, I do not say rejected.

THE NATURE AND ESSENTIALS OF A SACRAMENT.

8. A sacrament is defined to be a visible sign or series of visible signs used as a means for conveying some invisible grace to the soul (28). It is a pledge which assures the bestowal, and to such as receive it rightly the reception of grace (29), and it is effectual for this purpose by Christ's institution (30) through the co-operation of the Holy Ghost (31). The salutary administration of every sacrament, therefore, involves three things: (1) the use of proper outward signs; (2) the presence of certain conditions in the minister, and (3) the fulfilment of certain conditions in the receiver.

9. In regard to outward signs the Schoolmen distinguish, (1) the sacramental signs or visible things themselves which strike the senses and are called *sacramenta* (32), such as water in baptism, bread and wine in the Eucharist, which after consecration are spoken of as species (33); (2) the real but invisible things which they represent called the *res sacramenti*,

(28). Augustin, ap. Gratian, III. Dist. II. c. 32. Ayliffe, 474.

(29). Augustin, *Ibid.* c. 88: The gifts of God come to those who receive them with faith.

(30). Augustin, *Ibid.* c. 77: We must believe that sacramental signs are constituted by the words of Christ, by Whose command they were first created, by His word verily they are recreated for a better purpose.

(31). Augustin, *Ibid.* Caus. v. Qu. 1, c. 38; Gelasius, *Ibid.* c. 92; Gregory *Ibid.* c. 84: The sacraments are fruitful in the Church because the Holy Spirit residing therein produces unseen the effect of the same sacraments. Whether it be ministered by the good or the bad within the Church it is still a sacrament because the Holy Spirit mystically gives life thereto, Who once, in Apostolic times, appeared in visible manifestations.

(32). Cyprian de Unit. Eccl. c. 7: By the sacrament and sign of His [undivided] garment Christ has declared the unity of the Church. De Orat. Dom. c. 9: What sacramental signs are contained in the Lord's Prayer? Gregory, ap. Gratian III. Dist. II. c. 34: Perficiant in nobis tua sacramenta quod continent. Concil. Cloves. A.D. 747, Can. 10; Egbert's Excerpt. 41, A.D. 740, speak of the sacramenta, *i.e.* the several sacramental signs in baptism.

(33). The term species is used by Augustin, ap. Gratian III. Dist. II. c. 33., and Gregory, *Ibid.* c. 34, to express the outward signs which strike the senses.

such as the cleansing by the water, the Body and Blood of Christ; and (3) the whole sacrament whereby grace is bestowed, called *sacramentum et res* (34). The sacramental signs which strike the senses consist partly of words, partly of things (35) —the spoken word which is called the form, and the visible thing or element which is called the matter (36). When the matter and form are combined with a solemn invocation of the Trinity, or as it is said with intention, the Invisible High Priest Himself constitutes the sacrament (37), and the signs become effectual to convey the spiritual reality.

10. Matter is distinguished as being either remote or proximate (38). The remote matter is the material creature or visible thing which is employed for the purpose of the sacrament apart and distinct from the way in which it is used, such as water or bread and wine (39). The proximate matter is the remote matter used in a particular way, such as the pouring of water in baptism, the presentation of bread and wine in the Eucharist. The form consists of the words ordained by Christ

(34). Lynd. 244, 270, and Ayliffe, 474.

(35). Maldonatus in 4 Dist. XIV. Qu. 4, and Dist. XVI. Qu. 1; Liebermann VI, 13.

(36). Before the time of Hales they were called res or the outward matter and verba or the form. Tertullian De Prescript, c. 40, speaks of the res sacramentorum divinorum, Conf. De Bapt. c. 7; Augustin ap. Gratian, Caus. 1, Qu. 1, c. 54, speaks of elementum and verbum where verbum includes prayer or the minister's intention. *Id. Ibid.* c. 87, calls the form the carmen sacerdotis. Petilian asks: Does a man who sacrilegiously repeats the form without being authorised to use it make a valid sacrament? Lanfranc, *Ibid.* III. Dist. II. c. 48.

(37). Eusebius Emissen. ap Gratian III. Dist. II. c. 35: The Invisible High Priest converts the visible creatures into the substance of His Body and Blood by His own word, saying: Take, eat, this is My body, etc. Augustin, *Ibid.* III., Dist. IV. c. 39: It is one thing to baptize ministerially, another to baptize by [inherent] power; § 1: The disciples baptized ministerially, and Judas was then among their number. But those whom Judas baptized were not re-baptized . . . . For those whom Judas baptized Christ baptized. Ambros. De Spirito Sancto, Pref. 18; Lib. II., 118: Nostra sunt servitia, sed tua sacramenta. Neque enim humanum opus est divina conferre.

(38). Devoti Lib. II. Tit. II., c. 7.

(39). Augustin ap. Gratian, III. Dist. II. c. 36.

or used by custom in the Church (40). The intention is the prayer or liturgical coupling of the form with the matter, which is either the intention of the Church when a form of prayer is prescribed or the intention of the minister when he makes a proper use of that form. The terms matter, form and intention are not used in this technical sense, before the 13th century (41), but they aptly describe what in earlier times were respectively called the element and the word, the word as then (42) understood meaning the prayer which contains the form.

11. It is also usual to distinguish between the substantial or essential parts of a sacrament and its accessories or adjuncts which are spoken of as non-essential. Some of these accessories which give definiteness and precision to the observance are called integral parts, and are held to be so far necessary that their omission would under ordinary circumstances render the validity of the whole sacrament doubtful. Others which are known to have been introduced to add ceremonial dignity are not integral parts, and are only necessary because they are

(40). Eph. v. 26: Who hath cleansed us by the washing of water through the word (ἐν τῷ ῥήματι). Euseb. Emiss., already quoted, says: The sacrament is consecrated by Christ's own words. Const. 3 Peckham, A.D. 1281, says that a virtue attaches to the words taught by Christ. Lynd. 6, 241, 41, 12, 242, 244, 245.

(41). Morinus attributes this distinction to William of Auxerre, A.D. 1215.

(42). Iren. Haer. v. 2, 5: When the mingled cup and the prepared bread receive the word of God, the Eucharist becomes the Body of Christ. Hieronym. ap. Gratian, Caus. Qu. 1, c. 90, speaks of the solemnis oratio as being necessary to consecrate the Eucharist. Augustin, *Ibid.* c. 54: Take away the [consecrating] word and what is there but water. The word is added to the element and it becomes a sacramental sign. Whence this great power of the water to cleanse the heart by touching the body but by the action of the word? Not because it is uttered but because it is believed [*i.e.* used in prayer]. For even in the word itself the transient sound is one thing, the abiding effect another. Gregory, *Ibid.* III., Dist. II. c. 34: The priest prays that the Body of Christ, which is now in his hand under the visible form (sub specie) of bread and wine may be received with manifest vision of what it really is. Innocent III. in Decret. Lib. III. Tit. xlii. c. 5: Two things are necessary in baptism, the word and the element.

enjoined (43). In times anterior to these scholastic distinctions each sacrament appears to have been looked upon as a great and complex whole (44), consisting of several sacramental signs requiring the corporate action of many persons (45). The grace of the sacrament was held to be the result of the whole series of acts, and of the common prayers of the faithful which accompanied them (46). Participation was moreover required in what are now regarded as lengthy preparations before any one could aspire to reap the benefit of the promise made by Christ that whatever two or three should ask in His name should be granted them.

12. The administration of the sacraments or manner of using the proper outward signs is according to Western custom threefold, viz., (1) solemn, (2) public, and (3) private. Whenever all the constituent signs are used by the whole Church, each member according to his position contributing directly thereto, the administration is termed a solemn administration. One conducted by a single presbyter or deacon, vicariously on behalf of all the members of some recognised Church-unit or congregation, and as nearly as circumstances allow in the same way as a solemn administration, is termed a public but not a solemn administration. One performed in a private chapel or house on behalf of an individual or private group of Christians, and shorn of many of those acts which indicate the participation of all, is a private administration.

(43). Tournely, De Confirm. Qu. 1, Art. III. : In administering and receiving sacraments no one of these things ought to be omitted which the Church observes and commands.

(44). Thomas Aquinas, Part III. Quaest. 67, Art. 6 : Unum baptisma est nec potest sacramentum in partes secari.

(45). Clem. Strom. VII. 6 : Breathing together (*σύμπνοια*) is properly said of the Church.

(46). Cyprian De Orat. Dom. c. 8 : They [three] spoke as from one mouth, and therefore as they prayed their speech was availing . . . God, Who maketh men to be of one mind in a house, only admits to the eternal home those among whom prayer is unanimous. *Id.* De Unit. Eccl. c. 12 : The Lord said, If two of you shall agree on earth . . . it shall be given you . . . . showing that most is given not to the multitude, but to the unanimity of them that pray.

13. On the part of the minister two conditions are required. (1) He must possess the necessary capacity and authority to administer the sacraments, which in most cases involves both order and jurisdiction; (2) he must have the intention of ministering the particular sacrament at the time, *i.e.* he must not only conform to the Church's intention by following the prescribed liturgical form where such exists, but he must follow it intending to do what the Church intends (47). Neither faith nor holiness are essential on his part to give validity to the sacrament, because the great High Priest is the real agent, from Whom alone the effectual hallowing comes (48). Were it otherwise doubts would arise as to the validity of every sacrament.

14. Order is required in the minister for all sacraments (49) except baptism in case of necessity, (50) and matrimony (51); and jurisdiction for all sacraments except baptism and penance in cases of necessity (52). In cases of necessity a layman may baptize and a priest without jurisdiction may give penance, because the authority of the Church, at least in the West, has by anticipation invested him with the necessary order and jurisdiction for the purpose (53).

(47). Lynd. 245.

(48). Lynd. 43: In and through the sacraments the grace of healing must be drawn from Christ the Chief Physician, although He has not so restricted His power to the sacraments but that He can by other means bestow grace.

(49). Augustin ap. Gratian, Caus. 1, Qu. 1, c. 96: From which it is seen that the Spirit of grace does not follow the person of him who is worthy or unworthy, but the ordination by tradition, so that however meritorious a person may be he cannot bless unless he have been ordained to exhibit the office of the ministry.

(50). Lynd. 41, 243, says that although a presbyter may baptize in presence of a bishop because baptizing belongs to his office, yet no other cleric may baptize in presence of a presbyter, nor a layman in presence of a cleric, nor a woman in presence of a man, because these are only allowed to baptize in cases of necessity.

(51). Devoti Lib. II. Tit. II. § 14; Dalrymple *v.* Dalrymple, 2 Hagg. Cons. 64: Before the Council of Trent marriage had the character of a sacrament and the full essence of matrimony without the intervention of a priest.

(52). *See* Penance.

(53). *See* Punishments.

15. The intention required on the part of the minister (54) involves such a use of the prescribed or customary liturgical forms as belongs to an intelligent agent, and not to an unconscious automaton or to one acting in mimicry (55). The Schoolmen distinguish three kinds of intention: (1) actual when a person deliberately does a thing, intending to do it all the time; (2) virtual, when, having made up his mind to do a thing, and begun it with that intention, his mind afterwards wanders whilst he is doing it; and (3) habitual when he does a thing from habit without specially thinking of what he is doing, but without any contrary intention. In any one whose office it is to administer a sacrament, virtual and even habitual intention in public discharge of it suffices (56), since the minister is the agent through whom the great High Priest acts (57).

(54). Concil. Florent. A.D. 1439, Decret. ad Armenos: Sacraments are constituted by three things—things as the matter, words as the form, and the person of the minister who performs the sacrament acting with the intention of doing what the Church does. Lynd. 65, says that a layman can validly baptize so that he has the intention to baptize, and observes the form of the Church. *Id.* 235, says that to constitute the Eucharist there must be virtus verborum et intentio illius qui hoc sacramentum instituit, just as *Id.* 121, says that to constitute theft there must be animus furandi.

(55). Augustin ap. Gratian III. Dist. IV. c. 31: Hieronym. *Ibid.* Caus. I. Qu. 1, c. 90: Priests go wrong in thinking that the words and not the life [*i. e.* so far as it affects the intercession] make the Eucharist, and that the solemn prayer (orationem) is alone necessary, and not the merits of the priest [which make it effective intercession]. See the story of Athanasius in Socrates, 1, 15, and Bonaventura, 4 Dist. 6 Qu. 1, art. 2; Gavanti Thesaurus I. 337; Maskell's Ancient Liturgy, 119, Lynd. 40: No sacrament or other ecclesiastical act can be valid which is done without the intention of performing it. It is otherwise if it is done with the intention of performing it conditionally.

(56). Liebermann, VI. 61, shows from the context that Thom. Aquin. III. Qu. 64, art. 8, uses habitual in the ordinary sense of virtual.

(57). Devoti., Lib. II. Tit. II. § 16; Benedict XIV. De Syn., Lib. VII. c. 6, No 9, says of baptism by Calvinists: The private error of the minister does not hinder the validity of the sacrament, but is overborne by his general intention to do what Christ instituted, or what is done in Christ's true Church. Craisson, § 3185. Thom. Aquin. III. Qu. 64, art. 10: The perverse intention of the minister perverts his work, not that of another; and therefore, that which he does is perverted so far as it is his work, but not in so far as it is Christ's work.

What is wanting in the minister's intention is supplied by the intention and prayers of the faithful on whose behalf he ministers (58).

16. For the same reason the validity of the sacraments is not impaired by the unworthiness of the minister (59). Nevertheless, sacraments ought not to be received at the hands of those known to be unworthy (60). If the unworthiness arises from irregularity or ecclesiastical censure, the duty to refuse them on this account does not arise until the irregularity or censure has been brought home (61). If it is caused by a sin unto death, the sacraments may still be received at the hands of those who are guilty of such sins, unless the sin is personally known to the receiver. In such a case it were better to abstain from receiving them for fear of being a partaker in the sin.

(58). Thom. Aquin. III., Qu. 64, art. 8.

(59). The Donatist controversy arose on this point. The Donatists contended that since Felix of Aptunga was a traditor, his ordination of Caecilian was invalid. Augustin ap. Gratian, Caus. I. Qu. 1, c. 30 : The spiritual efficacy of the sacraments is received pure as the light by those who are to be enlightened thereby, and is not sullied because it passes through the unclean. c. 32 : The sacraments of God are always good (recta) by whomsoever they may be administered. *Ibid.* c. 33-38, c. 46 : Those whom Judas baptized, Christ baptized, so those whom a drunkard, a murderer, an adulterer baptized, Christ baptized, if it was the baptism of Christ ; c. 58, 87 : The manners of evil men cannot hurt the sacraments of God ; c. 77, 89, 98 : *Ibid.* III. Dist. II. c. 26 ; Anastasius A.D. 497, *Ibid.* 1, Dist. XIX. c. 8 : Baptism, though given by an adulterer and a thief, comes unsullied to him who receives it. . . If the rays of the visible sun passing through the foulest places are not sullied by contact with them, much less is the power of Him Who has made that sun visible restrained by any unworthiness of the minister. Gregory, *Ibid.* Caus. I. Qu. I. c. 84 : Nicolaus, A.D. 866, *Ibid.*, Caus. XV. Qu. VIII. c. 5, compares an unworthy minister to a wax torch giving light to others but burning away itself. Decret. Lib. III. Tit. II. c. 7 and 10 ; Lynd. 43, 236, 341.

(60) Cyprian, Ep. 67, 3 : A people obedient to the Lord ought to separate themselves from a sinful prelate. Nicolaus II. *Ibid.* I. Dist. XXXII. c. 5 : Let no one attend the mass of a priest whom he knows for certain to keep a concubine. Alexander II. *Ibid.* c. 6.

(61). Nicolaus I. A.D. 866, ap. Gratian, Caus. XV. Qu. VIII. c. 5 : Whatever a priest may be himself he cannot defile that which is holy. Communion ought not therefore to be refused at his hands until he is convicted by the judgment of the bishops. Gratian, Caus. IX. Qu. 1.

17. To obtain the grace of a sacrament three things are requisite in the receiver. (1) He must have the intention to receive the particular sacrament, because grace is given to no one unwilling to receive it (62). (2) He must be generally capable of receiving it, *i. e.*, he must be baptised before he can receive any other sacrament, and must be a man and not a woman before he can be ordained (63). And (3) he must be morally qualified to receive it (64). Should he be known to be unqualified the sacrament should be refused him if he applies for it privately, but not if he applies for it openly unless he is a convicted or notorious offender, because every one has a right to his public reputation (65), and no man can know in how short a time God may work a change in the soul (66).

18. Baptism may nevertheless be administered to the children of Christian parents although they have not the intention to receive it, and to other children provided they are

(62) Innocent III. in Decret. Lib. III. Tit. XLII. c. 3; Liguori Lib. VI. No. 139, says that baptism administered by force against the mind's desire is an absolute nullity. On the other hand, Augustin ap. Gratian III. Dist. IV. c. 31, says that baptism obtained by deceit is nevertheless true baptism. Lynd. 43: The sacraments invariably are the channels of truth, but they are not always effective means of health, which does not arise from defect on the part of the sacrament, but on the part of the receiver, because grace is given to no one unwilling to receive it.

(63). Apost. Const. III. 6: We do not permit our women to teach in the Church (1 Cor. XIV. 34). *Ibid.* III. 9: The blessed Virgin was not employed to baptize Christ, but John the Baptist. Egbert's Excerpt. 87 to v. 740; Hobart p. 149: If a mere layman . . . be instituted and inducted [to a benefice] this is not a mere nullity, but he is a parson de facto . . . and his insufficiency must receive examination, but the incapacity of a woman appears in itself. Gratian I. Dist. XIII. c. 25.

(64). Augustin ap. Gratian, Caus. I. Ru. 1, c. 78: All sacraments, as they prejudice those who treat them unworthily, so they benefit those who worthily receive them. Innocent III. in Decret. Lib. III. Tit. XLII. c. 3.

(65). Concil. Afric. ap. Gratian, Caus. VI. Qu. II. c. 3; Eugenius in Decret. Lib. I. Tit. XXXI. c. 2; Alexander III. *Ibid.* Lib. II. Tit. I. c. 4; Thomas Aquin. 3 Qu. 80, art. 6. Craisson § 3209.

(66). Theodori Poenit. 1. VIII. 5, in H. and S. III. 184: True conversion may take place at the last moment, because God regards not only time but the heart, and the robber in his last hour by one moment's confession deserved to be in paradise.

placed among Christian surroundings. With adults this cannot be done, but they must always have such an intention as leads them to ask for it. For all sacraments, excepting penance and matrimony, habitual intention suffices in the receiver ([67]), and even interpretative intention is enough to qualify for the reception of extreme unction ([68]); but penance and matrimony require actual or at least virtual intention, because in them the receiver is also a co-ministrator.

## The Effect of Sacraments.

19. The effect of sacraments, when properly administered and rightly received, is in all cases to bestow grace ([69]), and in some sacraments to impress a character also. The grace bestowed includes (1) sanctifying, and also (2) what is termed sacramental grace; the character is an indelible character.

20. Sanctifying grace is the grace of the Holy Spirit communicating holiness ([70]) which renders the soul well-disposed towards God, and is spoken of as *gratia gratum faciens*. It is

(67). Craisson, § 3235.

(68). Const. 9, Peckham, A.D. 1281, directs extreme unction to be given to frenzied persons at lucid intervals. Devoti, § 47.

(69). According to Lynd. 309, grace means three things: (1) Generally the divine assistance given to every act which has made us what we are; (2) specifically the assistance whereby man prepares himself to receive a gift of the Spirit; and (3) the Divine gift itself. In 1 Cor. xv. 10, it is used in all three senses: (1) By the grace of God I am what I am; (2) His grace which was bestowed on me was not in vain; (3) I laboured, yet not I but the Grace of God which was with me. Grace is moreover either (1) effectual and operative, or (2) co-operative: effectual grace is either preventive, initiative, or victorious; co-operative grace is either supplementary, perfecting, or assisting. The Thomists and Scotists differ as to the way in which the sacraments bestow grace, the Thomists alleging that they are the physical cause of grace, the Scotists, that they are its moral cause. Scotus, Lib. IV. Dist. 6, Qu. 5; Devoti. Lib. II. Tit. II. § 9, 13.

(70). Concil. Milev. A.D. 402, Can. 3 in Codex Eccles. Afric. III: Whoever says that the grace of God, whereby a man is justified through Christ, only avails for the forgiveness of past sins and not as a help against committing them in future, let him be anathema.

sometimes primary and quickening (71), as when a new life is implanted at baptism, or a sinner is reconciled to God in penance. At other times it is secondary and confirming, as when an additional grace is added to one already possessed (72), as in confirmation and order. Sacramental grace is the grace peculiar to each sacrament, whereby aid is given to the recipient as power and not as mere knowledge (73) for the discharge of the special obligations which that sacrament imposes (74). In baptism and penance primary grace is bestowed, and hence these are called sacraments of the dead. In all others, viz. confirmation, the Eucharist, extreme unction, order, and matrimony, secondary grace is superadded. These, therefore, are called sacraments of the living.

21. By character is understood a spiritual mark or seal (75) impressed on the soul, whereby the recipient is distinguished from all others who have not received the sacrament impressing it. The impression of a character is confined to three sacraments, viz., baptism, confirmation, and order, and because in each case it is indelible, no one of these sacraments may be repeated without sacrilege (76). If, however, there is reasonable ground to

(71). Concil. Araus. II. A.D. 529, Can. 5, declares that the beginning of faith is not from ourselves, but from the grace of God; Can. 7: that of ourselves we cannot even think what is good. Liebermann VI. 100.

(72). Devoti. Inst. Lib. II. Tit. II. § 10.

(73). Concil. Milev. Can. 3 in Codex Eccles. Afri. 112: If any one says that grace helps us not to sin because it enables us to understand what we are commanded to do, but does not give us the power of doing what we know, let him be anathema.

(74). Gousset Théologie Dogmatique, II. 270.

(75). Eph. i. 13, vi. 30; 2 Cor. i. 21; Cyril. Catech. xvii.; Chrysost. Hom. v. in 2 Cor.: As soldiers bear a mark, so likewise do the faithful, one imposed by the Spirit.

(76). Gratian, Caus. I. Qu. I. c. 57; Theodori Poenit. II. VIII. 3, A.D. 673, in H. and S. III. 197: Whoever has a doubt about his baptism, let him be baptized. Concil. Westminster, A.D. 1200, Can. 3: If there be a doubt whether one have been baptized or confirmed, we charge that the sacrament, of which there is a doubt, be conferred. The conditional repetition of a sacrament is referred by Devoti. Lib. II. Tit. II. c. 7, to the time of Boniface, A.D. 745. It is enjoined by Alexander III. in Decret. Lib. III. Tit. XLII. c. 2; Const. 3 Peckham, A.D. 1281. Lynd. 40 says a condition must be one of two kinds. Either it is contrary to the nature of the act, in

believe that any one of them has not been properly received, in such case the sacrament may by Western rule be repeated conditionally. If the good of others requires it, or if it is known to have been improperly received (77), it ought to be repeated (78). In no case may any sacrament be given for fee or reward (79).

### Sacramental Signs and Their Uses.

22. The principal outward signs ordained for sacramental purposes are : (1) water, (2) bread and wine, (3) oil either pure or in the form of chrism, the latter being an ointment com-

which case the act is not done at all ; or it is a collateral condition, in which case it is of no force to avoid the act. See Decret. Lib. IV. Tit. V. c. 7. Hence conditional baptism is not a sacrilegious reiteration of the sacrament. Lynd. 41, 244 ; Ayliffe, 103.

(77). Gratian Caus. I. Qu. I. c. 52.

(78). *Ibid.* c. 59.

(79). Iren. Haer. II. 31, 3, and 32, 4 ; Concil. Elib. Can. 48, A.D. 305, in Gratian Caus. I. Qu. I. c. 104 : It is decreed that they who are baptized do not put money into the chest (concham), lest the priest should seem to bestow for money that which he has freely received. Gelasius, A.D. 494, *Ibid.* c. 99 : Let priests make no charge for baptising or confirming the faithful. Concil. Brac. II. Can. 4 and 7, A.D. 572, *Ibid.* c. 102 and 103 ; Concil. Barcin. II. A.D. 599, Can. 2 ; Syn. Trul. A.D. 692, Can. 23, *Ibid.* c. 100 : Let no bishop, priest, or deacon, who dispenses holy communion, make any demand on him who receives the grace of communion. Concil. Tolet. XI. A.D. 675, Can. 3 ; Concil. Cabilon. II. A.D. 813, Can. 16, *Ibid.* c. 106 ; Concil. Tribur. A.D. 895, *Ibid.* c. 105 ; Egbert's Excerpt, 12, A.D. 740 : That no priest presume to sell a sacred order or the sacrament of baptism ; 40 : Let priests give the sacrament of baptism to all that want it, and forthwith succour all that desire penance, requiring no pay for it, unless they or their parents, or god-parents, freely give somewhat. Elfric Can. 27, A.D. 957 : Let not the servants of God perform their ministrations for money. Concil. London, A.D. 1126, Can. 2 : That no price be demanded for chrism, oil, baptism, visiting or anointing the sick, for the communion of the Body of Christ, or for burial. Concil. Westminster, A.D. 1138, Can. I., adds to the above list penance and espousals of women, making excommunication the penalty for disobedience. Concil. London, A.D. 1175, Can. 7 ; Concil. Westminster, A.D. 1200, Can. 8, repeat the same. Const. 27 Langton, A.D. 1222, after forbidding burial, baptism, or any sacrament or the contracting of matrimony to be denied for money adds : Our will is that the ordinary do justice as to what is used by custom

pound of oil and balsam in the Western Church ([80]), of oil and thirty-five different herbs in the Eastern Church, and (4) salt. ([81]) The principal sacramental acts are (1) the imposition of hands, including anointing and signing with the sign of the cross, (2) the washing of the feet, (3) the preaching of the Word, and (4) almsgiving. Some of these constitute the sacramental signs of the principal sacraments, others stand alone as lesser sacramentals.

23. Water is used for spiritual cleansing both in the sacrament of baptism and also in the lesser sacramental rite, purifying with holy water. Bread and wine are employed for the memorial oblation and sacrificial communion of the Eucharist, and also for the lesser sacramental which keeps up the communion of saints, the agape of ancient times, the benediction bread and benediction-wine of after times.

24. Oil and chrism are used to bestow in varying degree some gift of the Spirit,—oil to bestow the strength of the Spirit given from without, ([82]) chrism to impress the highest spiritual gift, the indwelling Spirit, the pledge and seal of

to be given according to the general council [*i. e.* Can. 66 of Concil. Lat. IV. A.D. 1215, in Decret. Lib. V. Tit. III. c. 42]. Const. 4 Otho, A.D. 1237, forbids fees for penance; but Const. 7 Edmund, A.D. 1236, allows the payment of a fee for breaking the ground at burial by custom. Const. 2 Othobon. A.D. 1268: To demand anything for chrism or the holy oil we judge unreasonable. Lynd. 79, 278.

(80). Its composition is given by Innocent III. in Decret. Lib. I. Tit. XV. § 2.

(81). In the prayer Exorcizo te creatura salis, in Leofric Missal, 235, salt is called salutare sacramentum ad effugandum inimicum.

(82). Clem. Recog. I. 45: Him first God anointed with oil, which was taken from the wood of the tree of life. From that anointing He is called Christ. Thence He Himself, according to the appointment of His Father, anoints with similar oil every one of the faithful, when they come to His kingdom for their refreshment after their labours. Apost. Const. III. 17: In baptism the oil is instead of the Holy Ghost. Leofric Missal, p. 258. Innocent III. A.D. 1204, in Decret. Lib. I. Tit. XV. § 2: To exhibit the visible unction, oil is blessed which is called either the oil of the catechumens or the sickman's oil and chrism is made, which is compounded of oil and balsam for a mystic reason. By oil clearness of conscience is expressed . . . . By balsam, the perfume of a good report . . . . Respecting clearness of conscience the apostle says, "Our glory is this the testimony of

habitual sanctification. (83) The candidate for baptism is anointed with oil to strengthen him for the new life before he is regenerated; the newly-ordered priest to strengthen him for his new duties; the sick man in extreme unction to fortify him for the passage from this world to the next. Sealing with chrism is the final act in baptism, (84) in confirmation, (85) in the consecration of a bishop, and it is also used for the permanent hallowing and irrevocable devotion to holy purposes of churches, altars and sacred vessels (86) as distinct from simply blessing them.

25. The imposition of hands is a term used to express any outward act in which the hand (87) conveys the benefit of cor-

a good conscience," for "the king's daughter is all glorious within." Respecting the perfume of a good report the same apostle says, "For we are a sweet savour of Christ everywhere." Lynd. 37.

(83). Iren. III. 18, 3: It is the Father who anoints, but the Son who is anointed by the Spirit who is the unction. Tertullian, De Resurr. 8: The flesh is anointed that the soul may be consecrated. Apost. Const. III. 17: The ointment is the confirmation of the confession; VII. 22: The ointment is the seal of the covenant. Pseudo.-Isidor. ap. Gratian. I. Dist. LXXV. c. 1: All sanctification comes from the Holy Ghost Whose invisible virtue is bound up with holy chrism. Stat. Eccl. Ant. A.D. 505, Can. 36, *Ibid.* I. Dist. XCV. c. 4.

(84). Apost. Const. VII. 22.

(85). Rabanus ap. Gratian, III. Dist. V. c. 5: The baptised person is signed with chrism by the priest on the top of the head, but by the bishop on the brow, the former unction signifying the descent of the Holy Ghost upon him to make His habitation there; the second implying that the sevenfold grace of the Holy Spirit has come to him with the plenitude of knowledge, holiness and power.

(86). Innocent III. in Decret. Lib. I. Tit. XV. § 8.

(87). Apost. Const. VIII. 38: Bow down for the imposition of hands. And let the bishop add this prayer (blessing). Augustin ap. Gratian, Caus I. Qu. I. c. 74: The imposition of hands is not like baptism a thing not to be repeated; for what else is it but a prayer (benediction) over a man? Stat. Eccl. Ant. Can. 2. ap. Gratian I. Dist. XXIII. c. 7, speaks of "pouring the blessing over a bishop when he is consecrated." Concil. Agath. A.D. 506, *Ibid.* I. Dist. LXXVII. c. 6, calls the ordaining of a deacon the blessing of a deacon. Isidor. De offic. c. 54: The imposition of hands is given for this reason, that the Holy Spirit may be invited being summoned by the benediction. Concil. Tolet. IV. A.D. 633, Can. 13, speaks of impositions of hands (*i. e.* forms of benediction) being composed like

porate prayer to the individual. Anointing with oil (88) and anointing with chrism (89) are emphatic forms of it, whereby those spiritual gifts which require the prayers of the whole fasting Church as well as of the faithful present at the time are communicated. Usually the benefit of the prayers of others is imparted by a simple elevation (90) or touch of the hand called a blessing, or by signing with the sign of the cross. Imposition of hands is used at baptism (91) and confirmation, at the ordination of a bishop (92), priest (93) or reader (94), to mark the bestowal of a permanent character; in penance (95) and

solemn prayers (missae), collects (orationes) and commendation prayers. Concil. Chelsea, A.D. 787, Can. 6: Let not a priest desert the Church to which he was blessed (*i. e.* ordained). Leofric Missal, 233, calls a prayer and signing with the sign of the cross an impositio manuum.

(88). Concil. Elib. A.D. 305, Can. 39 and Concil. Arelat. A.D. 314, Can. 6, call the rite whereby a person was made a catechumen the imposition of hands. It consisted in signing with the sign of the cross and anointing with oil. The anointing before baptism with oil is called imposition of hands in Apost. Const. III. 15, and anointing a king is so called by Innocent III. in Decret. Lib. I. Tit. vi. c. 34.

(89). Innocent III. in Decret. Lib. I. Tit. XV. § 7: By impressing chrism on the brow the imposition of hands is expressed. Anointing with oil and chrism was the Gallican practice, but not the Roman in ordaining before the 9th century. *See* Order, § 21.

(90) Lynd. 338. Tertullian De resurr. c. 8: The flesh is overshadowed (adumbratur) at the imposition of hands.

(91). Tertullian, De bapt. c. 8, says that impositio manuum is the final act in baptism.

(92). Stat. Eccl. Ant. A.D. 505, Can. 2. ap. Gratian I. Dist. XXIII. c. 7.

(93). *See* Order, § 20.

(94). Syn. VII. A.D. 787, ap. Gratian I. Dist. LXIX. c. 1.

(95). Stat. Eccl. Ant. A.D. 505, c. 80, ap. Gratian Can. XXVI. Qu. VII. c. 6: Every fasting season let the priests' hands be laid on penitents. Concil. Agath. A.D. 506, *Ibid.* I. Dist. L. c. 63: Let penitents when they apply for penance receive the imposition of hands and of sackcloth upon the head from the bishop. *Ibid.* c. 64: Let the bishop place his hand on them and sprinkle them with holy water. Concil. Cathag. V. A.D. 401, *ibid.* c. 65; Leo A.D. 458, *ibid.* c. 67: It is contrary to ecclesiastical custom that priests or deacons guilty of any crime do receive the remedy of penance by the imposition of hands. Concil. Tolet. III. A.D. 589, Can. 11, requires those who come repeatedly to penance to do public penance, and to receive frequently the imposition of hands.

exorcism (96) to give healing; in receiving a heretic to reconcile (97); in simple benediction to strengthen by the prayers of others (98).

26. Signing with the sign of the cross (99), without any accompanying blessing, is a reminder that a Christian is the servant of the Crucified. It is therefore used to a catechumen when he is first admitted into Christ's service, and also to a Christian when he is readmitted after any great fall through penance (100). Individual Christians have from the earliest times ever employed it to call to mind that continual consecration of themselves as a living sacrifice to God, whereby they are enabled successfully to overcome temptations (101).

27. The washing of the feet was enjoined by Christ Himself as an act of humility, and a blessing was promised by Him as the sacramental effect (102) to those who therein followed

(96). Stat. Eccl. Ant. Can. 7, ap. Gratian I. Dist. XXIII. c. 17, authorises an exorcist to lay his hand on energumens.

(97). Innocent I. A.D. 416, ap. Gratian, Caus. 1, Qu. 1, c. 73.

(98). This was anciently called in the West the collectio or blessing prayer. See Worship.

(99). Basil ap. Gratian I. Dist. XI. c. 5. Apost. Const. VIII. 12, directs the bishop to commence the Eucharistic service by signing his forehead with the sign of the Cross. Cap. 29, Theodulf, A.D. 994, directs everyone to use it in making his daily prayer. Augustin, contra Faustum XIX. 14, calls it a sacramental sign.

(100). Const. 6 Peckham, A.D. 1281, calls it signaculum absolutionis; Lynd. 340.

(101). Rom. XII. 1; Tertullian de cor. c. 3: At every forward step and movement, at every going in and out, when we put on our clothes and shoes, when we bathe, when we sit at table, when we light the lamps, on couch, on seat, in all the ordinary actions of daily life we trace upon the forehead the sign of the Cross. Baeda IV. 24, relates of the dying Caedmon that "signing himself with the sign of the Cross he laid his head on the pillow and so ended his life."

(102). John XIII. 14, 17: Theodori Poenit. II. VI. 15, A.D. 673 in H. and S. III. 196: It is at the option of a monastery to wash laymen's feet. Except on Maunday Thursday they are not bound so to do. Concil. Tolet. XVII. A.D. 694, Can. 3: Although the washing of the feet is at all times expedient yet it is necessary that it be more especially observed on the day on which it was practised by Christ. Pseudo-Ambros. De Sacram. Lib. III. calls it a sacrament.

His example. By Him also the spoken word was ordained (103) to be an instrument of correction, contrition and instruction to hearers (104), and almsgiving to be a means of blessing to the giver (105). All of these, therefore, are divinely appointed signs of grace. Nevertheless, it is not usual to enumerate them among sacraments, because they are isolated sacramental signs (106).

(103). Matth. x. 27 ; Mark III. 14 ; Luke IX. 2 ; Acts x. 42. In I. Cor. I. 17, St. Paul says Christ sent me not to baptize but to preach. Leo, A.D. 445, ap. Gratian I. Dist. XIX. c. 7 : Christ willed that the sacramental sign of this gift [of preaching] should belong to all the Apostles.

(104). Gregory ap. Gratian I. Dist. XLIII. c. 1 ; Lynd. 288 : The preaching of God's Word is sometimes a cause of correction ; for it breaks the heart through fear, as Jeremiah [XXIII. 29] says : . . . It wears away the heart through grief, as the Psalmist [XI. 17] says . . . It softens the heart through love, as it is written in Canticles [v. 2].

(105). Luke xi. 41 ; Acts xx. 35.

(106). Liebermann, VI. 35, says that the washing of the feet is not in itself a means of grace. But as this does not agree with the words of Christ it seems more probable that it was not included among the great sacraments, because it consists of one and not of several sacramental signs.

## II.

# THE SACRAMENT OF BAPTISM.

### Baptism.

1. Among all the sacraments baptism holds the first place, and is called the sacrament of entrance or the foundation-sacrament (1) and the door of all other sacraments (2). It cleanses from sin both original and actual (3), delivers from the danger of condemnation and gives admission to the kingdom of heaven (4). Thereby the baptized person is incorporated into the Body of Christ (5), is new-born of the Spirit (6) and placed

(1). Basil. De Spir. Sanct. c. 12.

(2). Gregor. Nazianzen Orat. 40, says that baptism is sometimes called the gift (δῶρον), sometimes grace (χάρισμα), sometimes enlightenment (φώτισμα) or the garment of immortality (ἀφθαρσίας ἔνδυμα), sometimes the washing of the new birth (λούτρον παλιγγενεσίας) or the seal (σφραγίς). Lynd. 43, sacramentum introeuntium et dicitur janua omnium sacramentorum. Innocent III in Decret. Lib. III, Tit. XLIII, c. 3, A.D. 1206, calls it the foundation of all other sacraments.

(3). In the New Testament, Acts ii. 38; xxii. 16; 1 Pet. iii. 21; Eph. v. 26. Concil. Milev. A.D. 402, Can. 2, in Codex Eccles. Afric. Can. 110, anathematizes those who forbid the baptism of children, or say that baptism does not effect the remission of sins. Augustin ap. Gratian, III. Dist. IV. c. 3, Chrysostom. *Ibid.* c. 4; Theodori Poenit. II. IV. I. A.D. 673, in Haddan & Stubbs III. 194: In baptism sins are forgiven. Boniface ap. Gratian l. c. c. 136.

(4). Innocent III in Decret. Lib. III. Tit. XLII. c. 2, states that the baptism of John only conferred one of these three benefits. Thomas Aquinas III. Qu. 38, Art. 1, c. 1, says that the baptism of John was only a kind of preparatory sacramental rite. Devoti Inst. Lib. II. Tit. II, § 26.

(5). Rom. vi. 3; 1 Cor. xii. 13; Augustin ap. Gratian III. Dist. IV, c. 143; Ambros. *Ibid.* c. 9; Boniface, *Ibid.* c. 131 and 133.

(6). Iren. Haer, l. III. 17: Christ gave to the disciples the power of regeneration unto God. I. 21, 1. Concil. Elib. A.D. 305, c. 2: Those who have sacrificed after [coming to] the faith of the washing and regeneration.

in the way of salvation (7). There are in baptism two parts, one called the saving laver or the cleansing from sin, the other the renewal of the Holy Ghost or the implanting of a new spiritual life (8).

2. The essentials of baptism (9) as the saving laver are water (10) in its natural state (11) as the remote matter, the application of it as the proximate matter and words expressing that the person is baptized in the name of the Father, the

Gelasius A.D. 494, ap. Gratian Caus. I. Qu. I. c. 99; nor let them seek to disturb those who are new born by imposing any demands. Innocent III. in Decret. Lib. III. Tit. XLII. c. 3.

(7). Acts ii. 46, calls them *οἱ σωζόμενοι*. Concil. Constant. A.D. 382, Can. 7, says he comes over to the party of the saved. Const. I. Othobon, A.D. 1268: Baptism is known to be the first plank which brings them that sail thro' this troublesome world to the port of salvation.

(8). John iii. 5. Titus iii. 5, mentions (1) the *λοῦτρον παλιγγενεσίας*, (2) the *ἀνακαίνωσις Πνεύματος Ἁγίου*. Iren. Haer. III. 17, 2: Our bodies have received unity among themselves by means of that laver which leads to incorruption; but our souls by means of the Spirit. Wherefore both are necessary since both contribute towards the life of God. Cyprian De Vestit. Virg. c. 23: All who attain to the divine gift of inheritance by the sanctification of baptism therein put off the old man by the grace of the saving laver and renewed by the Holy Ghost are purged by a second nativity. *Id.* Ep. 69, 3.

(9). Innocent III. in Decret. Lib. III. Tit. XLII. c. 5: "In baptism two things are always necessarily required, viz. the word and the element." Word here includes both the form, *i.e.* the bare formula and the intention, *i. e.* using the formula for the purpose of baptizing. Lynd. 63, following Eugenii decretum ad Armenos at the Council of Florence, A.D. 1439, says, that there are three essentials to baptism (1) water, (2) the intention to baptize, and (3) using the form of the Church. Lynd. 42 and 242. Ayliffe 103, says matter, form and intention are necessary. The Novatians of old and some modern writers contend that order in the minister is also essential.

(10). Acts viii. 36; x. 47; *Διδαχὴ* vii. 1, 2: Baptize in living water; but if thou hast not living water in other water; if thou canst not in cold, then in warm. Tertullian de bapt. c. 4: It makes no difference whether a man be washed in the sea or a pool, a stream, or a fount, a lake or a trough. Augustin, ap. Gratian, III. Dist. IV. c. 1: Man is born anew of water (ex aqua) as a visible sign (sacramento) and of the Spirit as the invisible thing signified (intellectu).

(11). Egbert's Excerpt. 42, A.D. 740: Wine ought not to be mixed with the water. Lynd. 42.

Son and the Holy Ghost as the form (12). There must also be the intention to give the baptism of the Church; but any prayer that the water may be effectual for the remission of sins, or serious declaration (13) that it is used for that purpose, is sufficient intention (14), since the water derives its efficacy from Christ's institution and not from the minister (15). Baptism is invalid if administered in the name of Christ only (16), or if the

(12). Math. xxviii. 19; Διδαχὴ vii. 1; Justin I. Apol. c. 61; Tertullian De Bapt. c. 13; Contra Praxeam c. 25; Apost. Const. III. 6; Augustin ap. Gratian III. Dist. IV. c. 29: To baptize in the name of the Trinity is the form of the sacrament. Const. I Langton A.D. 1223; Const. 11 Edmund, A.D. 1236; Const. 3 Peckham A.D. 1281: The form of the Sacrament in the vulgar tongue consists not only in the signs but in the series of the words in which it was instituted by God, inasmuch as Christ the Lord hath conferred a regenerative power on these words so ranged as they are in the Latin tongue. Let then the baptiser say thus: "I christen thee in the name of the Father, and of the Son, and of the Holy Ghost." The form in the Greek Church (Martene I. 16) is: "*N.* the servant of God is baptized in the name of the Father, the Son and the Holy Ghost." This form was retained to meet the error of the Novatians who made the efficacy of baptism depend on the faith of the minister. Devoti Inst. Lib. II. Tit. II. § 26. Stephen's Eccl. Stat. 2015.

(13). Alexander III in Decret. Lib. III. Tit. XLII. c. 1, says that if a priest omits the words I baptize thee, the baptism is invalid.

(14). Concil. Milev. A.D. 402, Can. 2. in Codex Eccles. Afric. 110: Whoever says that the form of baptism when given for the remission of sins is a false and not a true form, let him be anathema. Petilian had said, If a man has learnt the priest's spells, is he therefore a priest because he sacrilegiously repeats them? to which Augustin ap. Gratian, Caus. I. Qu. 1, c. 87, replies that the argument does not apply because a priest is not necessary for baptism.

(15). See note 110 below, and *The Sacraments*, notes 37 and 57.

(16). Apost. Can. 58, ap. Gratian III. Dist. IV, c. 79: If any bishop or priest does not perform the threefold immersion of the one mystery, but immerses once in baptism into the death of Christ, let him be deprived. Cyprian, Ep. 72, 18, ad Jubian.; Apost. Const. VII. 22; Pelagius, A.D. 580, ap. Gratian, l. c. c. 30; Zacharias, A.D. 748, *Ibid.* c. 83, and in Haddan & Stubbs III, 51; Concil. Nic. A.D. 325, Can. 19, orders the Paulianists to be rebaptized, and Concil. Constant. A.D. 382, Can. 7, orders the same for the Eunomians, because they were baptized with only one immersion. Nicolas, A.D. 865, ap. Gratian. III. Dist. IV, c. 24, however declares baptism into the death of Christ to suffice, for which he quotes Ambros. De Spir. Sanct. I. 3, but the latter seems to rely on a mistranslation of Acts viii, 12. For

form is otherwise altered with the intention of not giving the baptism of the Church (17). Unless baptism is given in a running stream, the water should if possible, be first hallowed (18) with chrism, for which purpose only the new chrism may be used (19); but if hallowed water is not obtainable any water suffices. If baptism with water cannot be had two equivalents may take its place: (1) martyrdom which is called the baptism

the question in Acts xix, 2-5: Into what then were ye baptized? would be wholly unnecessary when addressed to baptized persons unless they had been baptized into the Spirit as well as into the name of Christ. The language of Nicolas is shared by Baeda, Hugo of St. Victor and Caietan.

(17). Iren. Haer. I. 21, 3, relates that Gnostics baptized "Into the name of the unknown Father, into truth the Mother of all things, into him who descended on Jesus, into union, redemption and communion." Zacharias, A.D. 744, ap. Gratian III. Dist. IV, c. 86, writes to Boniface: Your messengers state that in the same province (Germany) was a priest who was so ignorant of the Latin tongue that when he baptized he said: "I baptize thee in the name of Fatherhood (patria for patris), Sonship (filia for filii) and Holy Spiritess (spiritu sancta for spiritus sancti). Whereupon you thought that those so baptized ought to be rebaptized. Yet if he who baptized them said as aforesaid, not by way of introducing any error or heresy, but in simple ignorance of the Latin tongue, we cannot consent to the iteration of baptism." Theodori Poenit. I. V. 6, A.D. 673, in H. & S. III, 181: "If any one is baptized by a heretic who has a wrong belief in the Trinity, let him be baptized again. We cannot believe that Theodore said this, by way of going against the Council of Nicaea and the decrees of the Synod as laid down in respect of converted Arians who have a wrong belief in the Trinity" [but only of such as use (1) a wrong form with (2) a heretical intention]. Liguori, Lib. VI. No. 108, holds that if baptism is administered in the name of the Trinity without specifying the three Persons, the form is so altered that it may be invalid.

(18). Tertullian de Bapt. c. 4: All waters after invocation of God, attain to the sacramental power of sanctification. Basil ap. Gratian, Dist. XL c. 5: We bless the font of baptism with the oil of unction. Gratian III. Dist. IV. c. 126: If any one wishes to take holy water to sprinkle in his house, let him do so before the infusion of the chrism. Can. 37, Elfric, A.D. 957: Let no oil be put in the font unless a child be baptized there. Rabanus ap. Gratian III. Dist. IV. c. 70: After this [*i.e.* the anointing with oil] the font is consecrated. Leofric Missal, 237, gives the form.

(19). Gratian III. Dist. IV. c. 122, Const. 6, Peckham, A.D. 1279: If any one attempt to baptize or to anoint the baptized with any other chrism but the new...he condemns himself. Lynd. 37.

of blood ([20]), and (2) an ardent longing for it coupled with perfect charity ([21]), which is called the baptism of desire ([22]).

3. Water may be applied in one of three ways: (1) by immersion or dipping, (2) by affusion or pouring, and (3) by aspersion or sprinkling. The proper mode of baptizing is by immersion. Single immersion suffices, and was the old Spanish and British use ([23]); but to immerse thrice is preferable ([24]) because it signifies belief in the Trinity and the three days burial of Christ ([25]). In default of sufficient water, affusion is also permitted ([26]); and since single presbyters have been authorised to baptize publicly in non-collegiate churches without the assistance of a deacon or deaconess, the usual Western practice has been to baptise by

(20). Matt. x. 39; Tertullian de Bapt. c. 20: We have indeed a second font, to wit of blood...This is the baptism which both stands in place of the fontal bathing when that has not been received and restores it when lost. Cyprian de Orat. Dom. c. 24. Euseb. VI. 4, relates that Origen, A.D. 220, called this baptism by fire. Augustin ap. Gratian III. Dist. iv. c. 34; Cap. 36, Theodulf, A.D. 994: Sins are forgiven by baptism, they are covered by satisfaction, they are not imputed through martyrdom.

(21). Iren. Haer. IV, 12, 2: Love is the fulfilling of the law [Rom. xiii. 10]. He who loves God is perfect both in this world and in that which is to come. Augustin contra Donat. c. 21; Ambros. Oratio de obitu Valentiniani; He whom I was about to regenerate I have lost, but he has not lost the grace he hoped for...If martyrs are cleansed by their own blood, he is cleansed by his own piety and intention (voluntas). Innocent III. in Decret. Lib. III, Tit. XLII. c. 3; and Tit. XLIII. c. 2.

(22). Baptismus flaminis by Augustin ap. Gratian l. c. c. 34, Lynd. 278; Devoti Inst. Lib. II. Tit. II. § 22. The Council of Trent, sess. VI, c. 4, calls it votum.

(23). Concil. Tolet. IV. Can. 5, A.D. 633, ap. Gratian III. Dist. IV. c. 85: "To avoid the charge of heretical doctrine [because the Arians deny that the three Persons of the Trinity are one], let us hold one immersion in baptism." For the old British practice see Haddan & Stubbs, I. 153.

(24). Augustin ap. Gratian III. Dist. IV. c. 78; Hieronym. *Ibid.* c. 81; Gregory, *Ibid.* c. 80; Concil. Chelsea, A.D. 816, Can. 11: Let priests be taught when they minister baptism not to pour water on the heads of infants, but that they be immersed in the water as the Son of God hath in His own person given an example to all the faithful, when He was thrice immersed in Jordan. Tertullian adv. Praxeam, c. 26; Lynd. 242; Ayliffe, 103.

(25). Apost. Const. III. 17: The water is instead of the burial. Lynd. 242.

(26). Διδαχὴ VII, 3, If thou hast not living water [in which to immerse] pour water thrice upon the head.

affusion. Inasmuch as St. Peter is believed to have baptized by aspersion when 5000 were converted in one day (27), so baptism by aspersion is also allowed (28). The Eastern Church uses immersion only. Custom determines the practice (29). A name should be given at the time of baptism (30), the choice of which does not rest with the baptizer but with the person to be baptized or his sponsor (31). The baptizer may, however, refuse to give an improper name, or the name may be changed at the time of confirmation (32).

4. For the other part of baptism, the renewal of the Spirit oil with the imposition of the bishop's hands is ordinarily necessary (33). These are therefore sometimes called the second and third integral parts of baptism. Since the fourth century, and probably from a much earlier date, oil has been used in two

(27). Acts II and III.

(28). Cyprian. Ep. 75, 12, ap. Gratian III. Dist. IV. c. 127 : The sprinkling also with water prevails equally with the washing of salvation. Lynd. 247, says that when necessity requires baptism to be generally administered, it suffices that a drop of water touch any part of those to be baptized ; where there is no such necessity water must at least be poured on the head.

(29). Lynd. 242, Devoti. § 24.

(30). Const. I, Langton, A.D. 1223 ; Const. 3, Peckham, A.D. 1281.

(31). Stat. Ecc. Ant. A.D. 505, Can. 85, ap. Gratian III. Dist. IV, c. 60 : Let those to be baptized give in their names.

(32). Const. 3 Peckham, A.D. 1281 : Let priests take care that names which may carry a lascivious sound be not given to children at their baptism, especially to those of the female sex. If they be, let them be altered by the bishop at confirmation. Lynd. 246.

(33). In Acts viii. 17, and xix. 6, where the Apostles are said to have laid their hands on or sealed those who had received the baptism of water, the converts were in all probability first anointed with oil. Thus Christ says of himself (John vi. 28), Him hath the Father sealed (*ἐσφράγισεν*), but St. Peter (Acts x. 28) says, Him God anointed with the Holy Ghost. In 2 Cor. i. 21, 22, St. Paul says that He who confirms us (*βεβαιῶν*) and anointed (*χρίσας*) us is God, who also sealed us (*σφραγισάμενος*). In 1 John ii. 20, 27, it is said ; *καὶ ὑμεῖς χρίσμα ἔχετε*, and Eph. i. 13 and iv. 30 : *ἐσφραγισθῆτε τῷ πνεύματι*. Theophilus A.D. 170 ad Autolycum I. 12 : We are called Christians on this account because we are anointed with the oil of God. Tertullian de Bapt. c. 6, 7, 8 mentions (1) the washing with water ; (2) the anointing with oil ; and (3) the laying on of the hand with prayer or sealing. Isidor. De offic. 51 : As in the washing remission of sins is given, so by unction the sanctification of the Spirit is applied.

forms (34): (1) as exorcised or the catechumen's oil to bestow the strength of the Spirit on the completion of the catechumenate by way of immediate preliminary to the saving laver (35);

(34). Duchêsne Origines, p. 322, supposes that the use of oil as the completion of the catechumenate may have been a reduplication of oil as the completion of baptism. The two seem often confounded before the 10th century (Duchêsne, p. 453), but ordinarily perfumed oil, ointment, or *μύρον*, was used since the 4th century for the anointing after baptism, and the exorcised oil for the anointing of catechumens. Iren. Haer. I. 21, 5, relates that some heretics baptize by mixing oil and water together for baptizing, and afterwards anoint with balsam-ointment. Apost. Const. VII. 22 : Thou shalt (1) beforehand anoint the person with the holy oil, and afterwards (2) baptize him with the water, and (3) in the conclusion shalt seal him with the ointment ; that the anointing with oil may be the participation of the Holy Spirit, and the water the sign of the dying, and the ointment the seal of the covenant. Innocent III. in Decret. Lib. III. Tit. XLII. c. 3, and Lib. I. Tit. XV. § 6 : In the New Testament not only kings and priests are anointed but also all Christians, twice before baptism, to wit, with hallowed oil first on the breast, then between the shoulders, and twice after baptism, to wit, with holy chrism first on the crown, then on the brow. He who is to be baptized is anointed on the breast that by the Holy Spirit's gift he may lay aside error and ignorance and receive the right faith ; and between the shoulders that by the grace of the Holy Spirit he may shake off negligence and torpor and exercise good works . . . . that by the sacramental effect of faith there may be purity of thought in his breast, and by the exercise of works there may be vigour in exertion. . . . He who has been baptized is, however, anointed on the crown that he may be ready to give a reason of the faith that is in him. . . . He is also anointed on the brow that he may with a bold front confess what he believes. . . . Before baptism he is anointed with the holy oil, but after baptism with the holy chrism, because the chrism only pertains to a Christian. Lynd. 40.

(35). Augustin Ep. CXCIV. : The Spirit helps men in one way before taking up his habitation within them, in another way after taking up his habitation within. Before taking up his habitation within He helps men to become men of faith ; after taking up his habitation he helps them as men of faith. Apost. Const. VIII. 41, states that, after making his confession of faith, the candidate comes to the anointing with oil. VII. 42 : Now this is blessed by the high priest for the remission of sins and the first preparation for baptism. III. 16 : Thou therefore, O bishop, shall anoint the head of those that are to be baptized with the holy oil for a type of the spiritual baptism. Ambros. ap. Gratian III. Dist. IV. c. 87 : You are anointed as an athlete that you may come a catechumen to baptism.

and (2) as ointment or chrism to communicate the indwelling Spirit after the washing of regeneration (36). The exorcised oil was, at one time, applied to the whole person; but, by custom, it was applied to the breast and back only (37) by a presbyter or deacon in the case of men, and by a deaconess in the case of women (38), and afterwards by the bishop to the head. At a later time the bishop's anointing was deferred till the time of sealing (39) and was then given by a simple touch of the hand. The chrism is applied to the head or breast by a presbyter and afterwards by the bishop to the brow (40) in the form of the

(36). Eph. IV. 30: ἐν ᾧ καὶ ἐσφραγίσθητε; I. 13; Iren. V. 8, 1: We do now receive a certain portion of the Spirit tending towards perfection. V. 9, 2; V. 18, 2: The Spirit is in us all, and he is the living water. Apost. Const. III. 17: The ointment is the confirmation of the confession; VII. 22: the ointment is the seal of the covenant; VII. 43; Cyprian Ep. 69, 2: It is also necessary that he should be anointed who is baptized, so that, having received the chrism, *i.e.*, the anointing, he may be anointed of God. Hippolytus in Dan. 20, explains seal as the unseen communication of divine things, "Christ is the seal, the Church is the key." Concil. Araus. A.D. 441. Can. I. ap. Gratian III. Dist. IV. c. 125: Let no one who undertakes the task of baptizing ever go forth without chrism, because our rule is to be once anointed with chrism at baptism. Rabanus, *Ibid.* c. 88: After coming out of the water he is immediately signed on the crown (in cerebro) by the priest with holy chrism that he may be a partaker of the kingdom of Christ, and be called a Christian after Christ. Leofric Missal. 238. Lynd. 39.

(37). Basil ap. Gratian I. Dist. XI. c. 5: Thrice we anoint with oil those whom we baptize. Rabanus, *Ibid.* c. 70: Then his breast is anointed with sanctified oil with an invocation of the Holy Trinity that no remains of the latent enemy may remain in him. . . . He is anointed between the shoulders with the same oil that he may be fortified on every side and strengthened to do good works. See note 35.

(38). Apost. Const. III. 116: The deaconess shall anoint women, for there is no necessity that the women should be seen by the men, but only in the laying on of hands the bishop shall anoint her head.

(39). Apost. Const. II. 32: By the bishop ye were sealed with the oil of gladness and with the ointment of understanding.

(40). Gregory ap. Gratian, III. Dist. IV. c. 120: Let presbyters anoint the baptized on the breast so that bishops may afterwards anoint them on the brow. Innocent, A.D. 404, *Ibid.* c. 119: Priests may anoint the baptized with chrism which has been consecrated by the bishop but not on the

cross (41). If neither oil nor chrism can be had water suffices to give both the strength of the Spirit and also the seal of the covenant, as well as to give the cleansing effect of dying with Christ (42).

5. To make the ointment efficacious to convey the Spirit the essential requisite is the solemn prayer of the fasting Church, the effect of which is imparted by the imposition of the bishop's hands. This effect may be communicated in one of three ways: (1) directly by the bishop laying his hand upon the head of each anointed neophyte after the solemn prayer has been made on behalf of all, or in the case of infants by kissing each (43), whereby the anointing already received is consecrated and becomes a channel for conveying to them the indwelling Spirit (44); (2) indirectly, by the application of chrism which has been previously blessed by prayer and fasting so that the chrism itself conveys the effect of the prayers of the Church (45); or (3) remotely by putting chrism into the water before it is used for baptizing. The indirect methods have been almost universal since the 4th century (46). Usually the appli-

brow, because that is reserved for bishops when they bestow the Holy Ghost. Rabanus, *Ibid.* c. 88; Pseudo-Isidor. *Ibid.* III. Dist. v. c. 2: The baptized person is signed by the priest with chrism on the top of the head, but by the bishop on the brow. Const. 6 Peckham, A.D. 1279. Lynd. 39.

(41). Cyprian Ep. 55, 9: That our brow may be fortified so as to keep safe the sign of God. Rabanus ap. Gratian III. Dist. IV. c. 23. Duchêsne, p. 319.

(42). Apost. Const. VII, 22: If there be neither oil nor ointment, water suffices both for the anointing and for the seal and for the confession of dying [with Christ], *Ibid.* 41, 43.

(43). Cyprian Ep. 58, 4: An infant, although fresh from its birth, is not such that anyone need shudder at kissing it in giving it grace.

(44). Tertullian de Bapt. c. 8: Then the hand is laid on us inviting and invoking the Spirit through the benediction.

(45). Theodori Poenit. II. iv. 6, in Haddan & Stubbs, III. 193: In synodo Nicaena crisma fuit constitutum. Hippolyt. Haer. VI. 36; *Id.* in Susannah 18: The oil is the power of the Holy Spirit with which the faithful are anointed as with ointment after the laver of washing. Lynd. 36.

(46). Lynd. 39, speaks of both methods.

cation of the chrism is preceded, (1) by vesting the newly baptized in a white garment (47) or mystic veil (48) (instead of which in ordinary public baptisms a chrism-cloth, chrisom, or coif was used) to symbolize the royalty and priesthood imparted by the anointing; and (2) by placing a taper previously lighted and plunged in the water at its consecration in his hand to indicate the dispelling in him of the power of darkness by the true light (49). It was formerly followed at least in the solemn bap-

(47). Ambros. ap. Gratian VII. Dist. IV. c. 92: After baptism you received a white garment, to indicate that you had put off the covering of sin and had put on the chaste clothing of innocence. Rabanus, *Ibid.* c. 91 : After baptism the Christian is clothed in a white garment, indicating Christian innocence and purity, which, after the old stains have been washed away, he ought to preserve unspotted to present before the tribunal of Christ. All who are new born are clothed in white garments to symbolise the resurrection Church . . . The baptized, therefore, use white garments (albis), that those whose first nativity's face the cloth (pannus) of ancient error has obscured, the garb of a second glorious generation when put on may again exalt." These garments were worn for eight days whence the Sunday after Easter was called White-garment Sunday (Dominica in albis). Devoti Inst. Lib. II. Tit. II. § 35. Baeda II. 19, A.D. 731, relates that Edwin's children were baptized, A.D. 627, and were "snatched out of this life whilst they were still in their white garments." *Id.* V. 7, also says that Caedwalla died at Rome in 689, A.D. "being still in his white garments."

(48). Theodori Poenit. II. III. 2, A.D. 673, in Haddan & Stubbs III. 192: In baptism the priest is wont to remove the veil of infants (velamen infantium) on the seventh day. Rabanus ap. Gratian III. Dist. IV. c. 91 : After the holy unction the head is covered with a mystic veil (velamine mystico) that he may understand that he possesses the diadem of royalty and the priestly dignity. Theodori Poenit. II. iv. 7 l.c. III. 193 and Gratian III. Dist. IV. c. 121: "To use a chrism-cloth (pannus chrismatis) again for another baptized person is not unreasonable." That the mystic veil or chrism-cloth was regarded in this country as holding the place of the earlier white garment is clear from Leofric Missal. 238, which directs the chrisom (chrismale) to be placed on the head of the baptized with the words, "Receive the white garment." These chrism-cloths (panni chrismales) were ordered by Const. 12 and 13 Edmund A.D. 1236, to be used afterwards either to make ornaments for the Church or else to be burnt. Lynd. 33.

(49). Light is regarded as the symbol of victory over the powers of evil. Therefore Concil. Elib. A.D. 305, Can. 37, forbids energumens publicly to light a light. Lynd. 244. Baptism is constantly called φώτισμα

tism of Easter by giving him milk and honey to partake of (50). In Gaul and Milan the bishop also washed the feet of the newly baptized to teach them by example the practice of humility (51), and then dismissed them with the peace.

6. The proper introduction to baptism is the catechumenate, or period of probation and instruction. This in the 4th century was treated as a kind of lesser baptism and had its own form of initiation (52)—signing with the sign of the cross (53)—its own means of grace—repeated exorcism (54) by an exorcist—its own ceremony of completion—anointing with the catechumen's oil—and in the Roman Church its own sacrament for bestowing

illuminatio or enlightenment by Concil. Laod. A.D. 363, Can. 47, having regard to Heb. VI. 4 and X. 32. Apost. Const. VIII. 8, II. 32; Gregory Nazianzen Orat. de Bapt. c. 11. The taper was plunged into the font at the words, "Descendat in hanc plenitudinem fontis virtus Spiritus tui." Leofric Missal. p. 236: Hic pones cereum in fontem. Duchêsne, p. 300; Lynd. 243.

(50). 1 Pet. II. 2. Tertullian de Cor. 3: When we are lifted [out of the water] we taste first of all a mixture of milk and honey, and from that day we refrain from the daily bath for a whole week. Contra Marcion. I. 14: Hieronym. adv. Luciferian. Leofric Missal, p. 224, contains a benedictio fontis, lactis et mellis, in which the priest prays that God will give His servants to drink of this fountain and nourish them with this milk and honey. Syn. Trull. A.D. 692, Can. 57, ap. Labbe. VII. 1374, forbids the offering of milk and honey, but not the use of them for the baptized. Lyndwood does not mention their use in 1429.

(51). Missale Gothicum ap. Duchêsne, 314; Cæsarii Serm. 160; Maximus Turon. de Bapt. Tract. 3. Iren. IV. 22: The Lord Himself did by Himself wash away the filth of the daughters of Zion when He washed the disciples' feet. . . . He who washed the disciples' feet sanctified the entire body.

(52). Concil. Const. A.D. 382, Can. 7: The first day we make them Christians, the second catechumens, the third day we exorcise them. . . . and afterwards we baptize them. Leofric's Missal calls it, Ordo ad faciendum Christianum. Duchêsne 281.

(53). Leofric Missal, 237, directs the signing of the brow and breast. Duchêsne 289, 306.

(54). Origen contra Celsum VIII. 34: Learned Greeks teach that the soul at its birth is placed under the charge of demons. *Id.* VII. 67: By the use of prayers and other means which we learn from Scripture we drive them out of the souls of men. Justin Apol. I. c. 6: Numberless demoniacs . . . . our Christian men exorcising them in the name of Jesus

the wisdom by which Christians become the salt of the earth (55) —exorcised salt (56). There were, however, two stages in the catechumenate (57): (1) that of probationer catechumens who, after being signed with the cross, often continued such for years (58); and (2) that of approved catechumens called *competentes* or the elect. Both classes were allowed to be present at the earlier part of the Eucharistic service, but were dismissed together with the hearers after the public readings were ended, or according to the Roman use before the reading of the Gospels began (59); but whereas hearers were dismissed silently, catechumens were dismissed solemnly with benediction and the imposition of hands (60).

. . . . do heal. Cyril Praefat. ad. Catech. : Without exorcisms the souls cannot be cleansed ; for they are divine and gathered from the Holy Scriptures. Gregory Nazianzen De Bapt. c. 11.

(55). Duchêsne 285. Concil. Carthag. III. A.D. 397, Can. 5 : In the most solemn Paschal days let not the sacrament be given to catechumens but only the accustomed salt. Isidor de Orig. Offic. XXI. 3. The practice appeals to Mark IX. 49: Every [evil-doer] shall be salted with [penal] fire, but every sacrifice [*i.e.*, every true disciple, Rom. xii. 1] shall be salted with salt. Leofric Missal. 237: Receive the salt of wisdom purified thereby (propitiatus) to eternal life. Edgar's Law 43, A.D. 960. Cap. I. Theodulf, A.D. 994 : To us it is said, "Ye are the salt of the earth."

(56). Matth. v. 13 ; Baeda ap. Gratian III. Dist. IV. c. 65 : The salt of heavenly wisdom with which catechumens are initiated we are bidden to offer in all the sacrifices of our works. Rabanus, *Ibid.* c. 65: Then hallowed salt is placed in the mouth of the candidate for baptism to typify that being purified by the salt of wisdom he may be free from the stain of iniquity. Conc. Westminster, A.D. 1200, Can. 3 : Let foundlings be baptized whether laid with salt or without. Const. I Langton A.D. 1223.

(57). Apost. Const. VIII, 35, enumerates catechumens, energumens, and the illuminated, calling the last-named, c. 37, candidates for baptism. The two classes were sometimes called ατελέστεροι or probationers, and τελέστεροι or qualified catechumens. Devoti Lib. II. Tit. II. § 29.

(58). Concil. Elib. A.D. 305, Can. 42, requires 2 years. Concil. Nic. A.D. 325 Can. 2 : A man should stay a catechumen some time.

(59). Concil. Araus. A.D. 441, Can. 18 : That the Gospels be read to catechumens in all the churches of our [Gallican] provinces. This was decreed because at Rome they were not read to catechumens. Duchêsne 289.

(60). Apost. Const. VIII. 6 : Hearers were first dismissed in silence, then probationer catechumens, next energumens, after them the illuminated, last of all penitents, each class with solemn prayers.

7. Approved catechumens are those admitted to preparation for baptism. This preparation includes four things: (1) the instruction technically called catechism (61); (2) solemn exorcism by a presbyter as well as by an exorcist; (3) prayer and fasting (62); and (4) learning and confessing the faith. The duration of the period of preparation varied according to the custom of each Church, and appears to be the origin of the season now called Lent. In some places it lasted over twelve or ten weeks (63), but usually in the West it was confined to forty days (64), during the first twenty of which candidates devoted themselves to prayer and fasting (65), and during the last twenty received in addition exorcism (66), and were taught the Creed and the Lord's Prayer.

(61). Διδαχὴ VII. 1: Having beforehand taught all these things, baptize. Proper instruction before baptism is required by Apost. Const. VII. 39. Cyril's Cat. Myst. A.D. 350, is a resumé of this instruction. Baeda II. 14 relates that in 627, A.D. Edwin built a church with his own hands whilst he was receiving catechism and instruction.

(62). Διδαχὴ VII. 4: Before baptism, let him that baptiseth and him that is baptised fast and any others who can. Justin, 1 Apol. c. 61: They pray and entreat God with fasting for the remission of their sins, we praying and fasting with them. Then they are brought to the water.

(63). Apost. Const. III. 67, says three months. The Eastern Church now observes ten weeks.

(64). Syn. Patricii, Can. 29 in Haddan & Stubbs, II. 330: If any one wishes to receive the grace of God, let him not be baptized before he has gone through the forty days. Hieronym. Epist. ad Pamach. Cyril Catches. I. c. 5. Concil. Agath. A.D. 506, Can. 34, ap. Gratian, III. Dist. IV. c. 93, required Jews to be catechumens for eight months, but Gregory, *Ibid.* c. 98, requires only forty days, which was the period required by Concil. Laodic., A.D. 363, and by the Spanish Church. Duchêsne, p. 319.

(65). Tertullian de Bapt. 20: They who are about to enter baptism ought to pray with repeated prayers, fasts, and bendings of the knee, and vigils, and with the confessions of all bygone sins, that they may express what is even said of the baptism of John: They were baptized confessing their sins (Matth. III. 6.) Apost. Const. VII. 22: He who is to be initiated into His death ought first to fast and then to be baptized. III. 67: Let him attend to frequent fastings and approve himself in all things, that at the end of those three months he may be baptized on the day of the festival. VII. 36: This is not the baptismal fast. Augustin. ap. Gratian III. Dist. IV. c. 97: Let men before baptism do penance for their past sins; Concil. Paris, VI. A.D. 829, *Ibid.* III. Dist. V. c. 7.

(66). Stat. Eccl. Ant. A.D. 505, Can. 90, directs exorcists to lay hands on

Those receiving exorcism were called energumens (67); those who had been taught the Creed and the Lord's Prayer, the illuminated (68).

8. At Rome the Creed and the Lord's Prayer were "delivered" at the third of the seven scrutinies or public instructions (69), which took place on the Wednesday after mid-Lent, and the energumens were required to rehearse them at the last scrutiny on Easter Eve. In the Gallican Church the delivery took place on the Sunday before Easter, and the rehearsal followed on Maunday Thursday (70). Everywhere baptism was forbidden until the period of preparation had been gone through (71). In Portugal no one might be baptized within

energumens every day. Can. 91 directs energumens to sweep God's house. Can. 92 directs food to be brought to them every day by the exorcists whilst they stay in God's house. Concil. Brac. II. A.D. 572, Can. 9, orders the exorcising of catechumens to commence mediante quadragesima. Concil. Autissiodor. A.D. 578, Can. 2, says a media quadragesima. *Id.* Can. I. ap. Gratian III. Dist. IV. c. 55 and Caus. X. Qu. I. c. 12: Let the catechumens meet twenty days before baptism to be exorcised, during which let them be taught the spiritual meaning of the Creed. Lynd. 244.

(67). They are called energumens or persons under the power of the Prince of this world (John, XII. 31; XIV. 30; XVI, 11) in Apost. Const. VIII. 6, 7; Basil ap. Gratian I. Dist. XL. c. 5. Cyprian Ep. 75, 15: The devil is scourged and burned and tortured by exorcists, and although he often says that he is going out, yet in that which he says he deceives. When, however, they come to the water of salvation, we ought to know that the devil is beaten down. Coelestin. A.D. 431, ap. Gratian III. Dist. IV. c. 53: Let neither children nor youths come to the sacrament of regeneration before the unclean spirit is cast out by the exorcisms and exsufflations of the clergy. Concil. Brac. II. Can. I. A.D. 572 *Ibid.* c. 55; Rabanus, *Ibid.* c. 61; Baeda, *Ibid.* c. 65, 62; Cnut's Law, 4, A.D. 1017: Great is the exorcism by which the priest expels the devil as oft as he baptizeth a man.

(68). Heb. VI. 4; Apost. Const. VIII. 8: Ye that are preparing for illumination. Duchêsne, 316.

(69) Duchêsne, p. 287. The teaching of the Creed was called traditio symboli. Its rehearsal by the catechumen, redditio symboli.

(70). Concil. Laodic. A.D. 363, Can. 46; Concil. Brac. II. A.D. 572, Can. 49; and Syn. Trull. A.D. 692, Can. 78. The Peregrinatio Silviae ap. Duchêsne; Ambros. Epist. 28; August. Serm. 58; Concil. Agath. A.D. 506, Can. 13, direct the Creed to be taught eight days before Easter.

(71). Concil. Laodic. A.D. 363, Can. 45, forbids catechumens to be baptized after only two weeks of Lent have elapsed.

two or three weeks of Easter (72); in this country no one within eight days (73); and in Spain the baptistry was sealed up from the beginning of Lent to Maunday Thursday (74).

9. The completion of the catechumenate is given by anointing with the exorcised oil. In Gaul and Spain, where only the higher class of catechumens existed, anointing the mouth and ears with oil formed part of admission to the catechumenate itself, and this admission was called in consequence the laying on of hands (75). In Rome, and also at Milan, the anointing was one of the last acts before baptism, and was not allowed before the third scrutiny (76). It was immediately preceded by touching the nose and ears with saliva, called the Ephatha, to signify that Christians must ever be on the alert to do God's will (77). After it came the formal profession, consisting of (1) the ἀπόταξις, in which the candidate thrice dissociated himself from the devil, his pomps, and his works; (2) the σύντᾶξις, in which he associated himself with Christ and His people, and

(72). Concil. Martini, A.D. 572, Can. 49: No one may be admitted to baptism within two weeks of Easter, nor yet within three.

(73). Const. 10 Edmund, A.D. 1236.

(74). Concil. Tolet. XVII. A.D. 693, Can. 2: At the beginning of Lent let the doors of the baptistry be closed at the end of lauds and be sealed with the bishop's seal, so that the doors be not opened again till Maunday Thursday.

(75). Concil. Elib. A.D. 305, Can. 45, 39: If Gentiles, taken ill, desire hands to be laid on them, if their life is in any way honest, let hands be laid on them and let them become Christians. Concil. Arelat. I. A.D. 314, Can. 6: Let those who wish to believe, when sick, receive the laying on of hands. Theodoret, IV. 18, calls this "the Lord's seal." Duchêsne, 305, 319, sees in this anointing the Roman Ephatha, which immediately preceded immersion. See The Sacraments, note 88.

(76). Syn. Rom. ad Gallos, A.D. 384, Can. 8, mentions the third scrutiny, and states that it is not necessary to repeat at it the Ephatha anointing. Duchêsne, 289.

(77). Rabanus ap. Gratian III. Dist. IV. c. 68: Afterwards, the nose and the ears are touched by the priest with saliva . . . . that his nostrils may be open to receive the scent of the knowledge of God, and that his ears may be quick to catch the commands of God. The prayers in Leofric Missal, 238, express the same. Duchêsne's suggestion, p. 292, that nares mean lips, is not borne out by other authorities.

(3) the declaration of assent to the Christian creed (78). When baptism is publicly administered to infants, Western usage requires all the ceremonies of the catechumenate to be previously gone through, including exorcism, signing with the sign of the cross, salt, the Ephatha, anointing with thecatechumen's oil, and the profession of faith (79).

10. As all men are born with original sin, so baptism is necessary to all for salvation (80). Hence children and idiots

(78). Tertullian de Cor. 3, and Cyprian Ep. 69, 2, mention the renunciation of the devil as part of the profession. According to Cyril, Cat. Myst. 6, the renunciation was made facing West ; the profession of faith, facing East. Apost. Const. VII. 41 : Let the candidate for baptism declare thus : [1] I renounce Satan and his works, and his pomps, and his worship, and his angels, and his inventions, all things that are under him. And after his renunciation, let him [2] in his consociation say : And I associate myself to Christ, and [3] believe and am baptized into One unbegotten Being, the only true God Almighty, the Father of Christ, the Creator and Maker of all things, from Whom are all things ; And into the Lord Jesus Christ, His only begotten Son, the first-born of the whole creation . . . . . And I am baptized into the Holy Ghost, that is the Comforter Who wrought in all the saints from the beginning of the world, but was afterwards sent to the apostles by the Father, according to the promise of our Saviour and Lord Jesus Christ; and after the apostles to all that believe in the Holy Catholic Church ; into the resurrection of the flesh, and into the remission of sins, and into the kingdom of heaven, and into the life of the world to come. Duchêsne, p. 293.

(79). Const. 4 Peckham, A.D. 1279 ; Const. 3 Peckham, A.D. 1281 ; Lynd. 244, enumerates the signs used in baptism, both before and after, as the following :

> Sal, oleum, chrisma, cereus, chrismale, saliva,
> Flatus, virtutem baptismatis, ista figurant.
> Haec cum patrinis non mutant esse sed ornant.

(80). Justin Dial. Trypho. c. 43 ; Iren. Haer. II. 22 : Christ came to save all through means of Himself—all who through Him are born again to God—infants and children, and boys and youths and old men. Origen. Lib. V. in c. 6, in Rom. Cyprian. Ep. 58 ad Fidum : Our council [A.D. 253] judged that the mercy and grace of God is not to be refused to anyone born of man. Concil. Carthag. A.D. 418, Can. 2 ap. Gratian III. Dist. IV. c. 153 : Whoever says that infants inherit nothing of original sin from Adam to require the washing of regeneration . . . . let him be anathema. . . . Young children who have never committed actual sin are yet truly baptized for the remission of sins, that [the sin] which they have inherited by generation may be done away by regeneration. Augustin *Ibid.* c. 136 and

from their birth may be baptized (81), those who are only imperfectly born (82) and those whose humanity is doubtful (83). One person, however, cannot be baptized for another, nor can the dead be baptized; (84) and since intention is prerequisite in the case of every adult, even catechumens must ask for baptism (85). If through illness anyone is unable to ask, the request may be made by a friend conversant with his desire (86). In the case of children both the request and the profession of faith may be made by godparents or sponsors (87). Still with-

Caus. XXXII. Qu. IV. c. 2; Hieronym, *Ibid.* Caus. XXXIII Qu. III. Dist. II. c. 34; Concil. Araus. II. 529, Can. 1 and 2: If any one says that Adam's disobedience only injured himself and not his offspring, or that only the death of the body which is the punishment of sin, but not sin itself, which is the death of the soul, passed by one man to the whole human race, charges God with injustice and contradicts the apostle. Lynd. 245 says there are two kinds of generation, one carnal by fathers after the flesh, the other spiritual by baptism. *Id.* 242. Clem. Hom. XI. 27. Baeda, v. 7: He had learnt that in baptism alone the entrance to heaven is opened to mankind.

(81). Isidor. ap. Gratian III. Dist. IV. c. 74; Augustin, *Ibid.* c. 7, 8, 33, 76, 142; Boniface, *Ibid.* 130, 138; Innocent III. in Decret. Lib. III. Tit. XLII. c. 3, states that such receive baptismal grace quoad habitum, but not quoad usum.

(82). Augustin ap. Gratian III. Dist. IV. c. 114, states that the baptism of the mother does not effect the baptism of the child that is within her. Const. 14 Edmund A.D. 1236: If it be certain that the woman in childbirth is dead let her be cut open in case the child be thought to be alive [so that the child may be baptized]. Lynd. 246. Devoti Lib. II. Tit. II. § 28.

(83). Craisson, § 3297, suggests conditional baptism in some cases.

(84). In 1 Cor. XV. 29, which seems to imply the contrary, *ὑπὲρ νεκρῶν* appears to mean "for the purpose of dying with Christ."

(85). Stat. Eccl. Ant. A.D. 505, Can. 85; Concil. Tolet. IV. A.D. 633, Can. 57 ap. Gratian I. Dist. XLV. c. 5.

(86). Concil. Carthag. III. A.D. 397, Can. 34, ap. Gratian III. Dist. IV. c. 75: Should the sick not be able to answer for themselves, if their relatives at their own peril bear testimony to their desire [for baptism], let them be baptized. Augustin De Adult. Conjug. c. 26.

(87). Augustin ap. Gratian III. Dist. IV. c. 77: Since others make answer for infants in order that the celebration of the sacrament may be completed on them, it is effectual for their hallowing because they cannot answer for themselves. But if one makes answer for another who can answer for himself it has not the same effect. Whence it is said in the Gospel, and commends itself to all when it is read, "He is of age, he shall speak

out their parents' consent the children of Jews or heathen ought not to be baptized (88).

11. Although adults make answer for themselves yet godparents are also necessary for them (89). It is the duty of the godparents to see that those for whom they answer know the Creed and the Lord's Prayer, to bring them to confirmation and to hold them whilst being confirmed (90). Hence sponsors must be themselves confirmed Christians (91) and possess a knowledge of the Creed and Lord's Prayer (92). According to the Roman use each candidate has one sponsor only (93), either

for himself. Conf. *Ibid.* I. 76, 138. Concil. Clovesho, A.D. 747, Can. 11: That they propose the Creed to infants and to them that undertake for them in baptism and teach them the renunciation of diabolical powers and auguries and divinations, and afterwards teach them to make the established professions. Concil. Chelsea A. D. 787, Can. 2; Lynd. 244; Devoti, § 34.

(88). Devoti § 28; Thomas Aquinas Pars. 2 Quest. 10, art. 12. Such baptism is held to be valid if given, according to Concil. Tolet. IV. Can. 5, A.D. 633, ap. Gratian I. Dist. XLV. c. 5. Craisson § 3299. Matt. XII. 45, speaks of the danger of casting out the devil without bringing in another occupant.

(89). Called by Augustin l. c. susceptores, by Tertullian sponsores, generally patrini.

(90). Concil. Chelsea, A.D. 787, Can. 2: That all who undertake for children at the font know that they are sureties to the Lord according to their sponsion for the renouncing of Satan, his works and pomps, and for their believing of the Creed, that they may teach them the Lord's Prayer aforesaid and the Creed while they are coming to ripeness of age. Const. 4 Peckham A.D. 1279 requires children to receive catechism "between the time of their birth and their being perfectly baptized" [*i.e.*, confirmed]. Lynd. 243.

(91). Isidor. ap. Gratian III. Dist. IV. c. 74; Augustin *Ibid.* c. 77; Ayliffe 103. Theodori Poenit. II. iv. 9, *Ibid.* p. 194: No one is allowed to be sponsor to another who is not baptized and confirmed.

(92). Edgar's Law 22, A.D. 960: He that refuseth to learn Paternoster and Credo cannot undertake for others at baptism. Cnut's Law 22, A.D. 1017: Nor can he be surety for another at baptism much less at the bishop's hands till he have first learnt well to rehearse the Lord's Prayer. Cap. 22 Theodulf A.D. 994.

(93). Theodori Poenit. II. iv. 8, in Haddan & Stubbs, III. 193: One may act as father [to all] in catechism, baptism, and confirmation, if this be necessary, but it is not usual, but separate godparents stand for each. Leo IV. A.D. 853, ap. Gratian III. Dist. IV. c. 101: Let no more than one person,

a man or a woman (94); according to English use several are allowed, but the number of three ought not to be exceeded (95). Sponsors are forbidden to stand by proxy (96). Sponsorship is held to establish a spiritual relationship, which at one time was deemed as close as blood relationship, and carried with it corresponding duties and disqualifications (97).

12. The proper minister to baptize is a bishop (98) or a presbyter (99), who thereby becomes the spiritual father of the baptized (100). Any bishop or presbyter can baptize privately, because one who is unbaptized is a subject of no spiritual authority, and no presbyter may refuse to baptize in an emer-

either man or woman, receive an infant from the font. Urban II. *Ibid.* Caus. XXX. Qu. IV. c. 6: Let not husband and wife be together godparents to a child. Boniface, VIII. in Sext. Lib. IV. Tit. III. c. 3. Lynd. 242.

(94). Augustin ap. Gratian III. Dist. IV. c. 105; Theodori Poenit. II. iv. 10 A.D. 673 in Haddan & Stubbs III. 194: A woman may act as sponsor for a man in baptism, and similarly a man for a woman. Lynd. 242.

(95). Concil. Ebor. A.D. 1195 Can. 5 says not more than three; Const. I. Langton A.D. 1223: Let three at most be allowed to lift a child out of the font. Lynd. 242 states that the use of more than one is only lawful by custom.

(96). Lynd. 243. Craisson § 3321.

(97). Rabanus A.D. 853 ap. Gratian Can. XXX. Qu. I. c. 5. See Matrimony, § 26.

(98). Tertullian de Bapt. c. 17 says a bishop, and that a priest and a deacon may only baptize with the bishop's authority, propter ecclesiae honorem. Apost. Const. III. 11; Innocent I. Epist. ad Decentium; Augustin Serm. 333.

(99). Isidor. ap. Gratian III. Dist. IV. c. 19: It is clear that baptism must only be administered by presbyters, nor is it lawful for deacons to complete its mystery without a bishop or a presbyter, unless the extreme necessity of illness should compel him so to do in their absence. The same is also for the most part permitted to faithful laymen that no one may be called out of this world without the remedy of salvation. Concil. Clovesho A.D. 747 Can. 9.

(100). Iren. IV. 41, 2: When any person is taught by another he is termed the son of him who instructs him, and the latter his father. Apost. Const. II. 20: Let the bishop love the laity as his children. *Ibid.* II. 32: By the bishop God adopts thee for His child. . . . Love him who after God is become a father to thee and honour him. *Ibid.* II. 33: How much more should you honour your spiritual parents, and love them as your benefactors and ambassadors unto God, who have regenerated you by

gency (101) or for any sordid motive (102). Solemn baptism can, however, only be given by the bishop, and public baptism only by the incumbent of a parish, or by a presbyter or deacon in their presence respectively (103) with water which they have blessed. A deacon may not baptize alone except when he is placed in charge of a people (104) or no presbyter can be had (105), nor a

water? An uncertain author, ap. Gratian Caus. xxx. Qu. I.c. 82: Those whom we receive in penance are as much our spiritual children as those whom the wave of sacred baptism regenerates when we either lift them from the font or plunge them with the formula of the three-fold immersion. Const. 9 Peckham A.D. 1281: Father signifies the prelate of the Church whether mediate or immediate.

(101). Theodori Poenit. I. ix. 7 in Haddan & Stubbs III. 185 and Gratian III. Dist. IV. c. 22: Whatever presbyter, either in his own or in a strange district (provincia), shall refuse to baptize a sick person commended to him for baptism, or for preparation for the [last] journey, so that he die unbaptized, let him be deposed. *Id.* I. xiv. 28, *Ibid.* p. 189: If a sick infant or a pagan commended to a presbyter die [without baptism] let him be deposed. Concil. Chelsea A.D. 816 Can. 11; Lynd. 278. Baedae Poenit. III. 42 A.D. 731 in Haddan & Stubbs III. 329. Cap. 16 Theodulf A.D. 994: If any one bring a sick child to a mass-priest let him baptize it out of hand to what mass-priest's district soever it belongs. Concil. Ebor. A.D. 1195 Can. 6.

(102). Const. 27 Langton A.D. 1222: We firmly forbid burial, baptism . . . . to be denied to any on account of money.

(103). Ignat. ad. Smyrn. c. 8: It is not lawful without the bishop either to baptize or to celebrate the agape. The bishop's part in solemn baptism consists (1) in anointing or touching the head before immersion after the deacon has anointed the breast and back, (2) in addressing the baptized by his Christian name after the priest or deacon has plunged him, and (3) in sealing the brow with chrism. Syn. Rom. ad Gallos. A.D. 384 Can. 7: The priest and the deacon are in the habit of giving remission of sins at Easter, and completing the office when the bishop is present. They also descend into the font and act ministerially (in officio sunt), but the sum of what is done is allowed to be in the bishop's name (episcopi nomine facti summa conceditur). Selvaggius III. c. 2, § 1, gives instances of solemn baptism being suspended during the bishop's absence until his return.

(104). Concil. Elib. A.D. 305, Can. 77, Craisson, § 3280.

(105). Acts, viii. 38: Gelasius, A.D. 494, ap. Gratian, 1 Dist. XCIII. c. 13: Without the presence of a bishop or a priest let deacons not dare to baptize except extreme necessity compel them. Const. 12 Edmund, A.D. 1236: We charge that deacons presume not to administer penance or baptism except when the priest is not able, or not present, or stupidly refuses, and

layman except in case of real necessity (106). A layman baptizing without necessity exposes himself to excommunication and is disqualified for orders (107). Baptism by a woman was formerly forbidden (108). Nevertheless, such baptism is held to be valid in the Western Church so far as to cleanse from sin, if it cannot be avoided (109), and even baptism administered by a heretic, a pagan, or a Jew, provided it is given with the intention to baptize and the form of the Church is observed (110).

death is imminent. Theodori Poenit. II. III. 16, in Haddan & Stubbs III. 192 : Deacons can baptize.

(106). Concil. Elib. A.D. 305, Can. 38 : When travelling far from home, or at a distance from a church, a layman (fidelis) who has preserved his own washing and not been twice married may in case of necessity baptize a sick catechumen, yet so that if he recovers he must bring him to the bishop that his baptism may be completed by the imposition of hands. Augustin ap. Gratian III. Dist. IV. c. 21 and 36, tells of a penitent baptizing a sailor in a case of shipwreck. Gelasius, A.D. 494, *Ibid.* I. Dist. XCIII. c. 13 : To baptize in case of emergency is for the most part (plerumque) conceded to lay Christians. This Isidor. *Ibid.* III. Dist. IV. c. 19, repeats. Const. 1 Othobon, A.D. 1268, allows that it can be administered by anyone in case of necessity. Const. 3 Peckham, A.D. 1281 : It is allowed to laymen or women to baptize children in case of inevitable necessity. Lynd. 41, 43, 241. Yet Apost. Const. III. 11, and the whole Eastern Church disallow lay baptism. See Concil. Lat. IV. Can. 9, A.D. 1215, in Decret. Lib. III. Tit. XLII. c. 6. See Sacraments, § 14.

(107). Theodori Poenit. I. IX. 11, l. c. III. 185 : If an unordained person rashly (per temeritatem) baptize let him be excluded from the Church and never ordained. Decret. Lib. V. Tit. XXVIII. c. 1.

(108). Epiph. Haer. 49 ; Stat. Eccl. Ant. A.D. 505, Can. 100, ap. Gratian III. Dist. IV. c. 20 : Let not a woman presume to baptize. Apost. Const. III. 9 : If baptism were to be administered by women certainly our Lord would have been baptized by his own mother and not by John. Conf. Innocent III. in Decret. Lib. V. Tit. XXXVIII. c. 10.

(109). Auctor incert. ap. Gratian Caus. XXX. Qu. III. c. IV. ; Concil. Westminster, A.D. 1200. Can. 3 ; Const. 33 Edmund, A.D. 1236 ; Const. 3 Peckham, A.D. 1281.

(110). Augustin ap. Gratian III. Dist. IV. c. 31 : Were I pressed to give my opinion I should not hesitate to declare those baptized who received it whenever and by whomsoever administered in the form of the Gospel words, in good faith and with some knowledge of the Truth, although it would not profit them for spiritual salvation, if they were wanting in that charity whereby they are engrafted into the catholic Church. For "If I have all faith," etc. Baeda, *Ibid.* 51 : Whether it be a heretic, a schismatic, or

13. As the prayers of the fasting Church are necessary to bestow sacramentally any gift of the Spirit, so the proper time for the solemn administration of baptism in its integrity is at the close of the Lenten or some other fast season. Easter-eve or one of the following eight days ([111]) is the regular time, and also Whitsun-eve. ([112]) In the East, in Africa, and in Ireland solemn baptism was likewise given at the Epiphany, ([113]), and in Gaul at Christmas

a criminous man, whoever baptizes with the confession of the Holy Trinity, he who has been so baptized may not be re-baptized by good catholics. Theodori Poenit. 1, IX. 12, in Haddan & Stubbs, III. 185, and ap. Gratian Caus. 1, Qu. 1, c. 59, repeating III. Dist. IV. c. 23: The Roman Pontiff holds that the grace of baptism is not bestowed by the man who baptizes, although he be a pagan, but by the Spirit of God. Nicolaus, A.D. 865, *Ibid.* III. Dist. IV. c. 24, says baptism by a Jew is good. Innocent III. in Decret. Lib. III. Tit. XLIII. c. 3, says that a man is made a member of Christ not only by the sacrament of faith, but also by faith of [having received] the sacrament. Lynd. 41, 50, 244, 245. Stephens' Eccl. Stat. 2032.

(111). Lynd. 37.

(112). Syn. Rom. ad Gallos, A.D. 384, Can. 7, allows presbyters and deacons to give remission of sins and to complete their ministry at Easter. At other times a presbyter is allowed to baptize in case of sickness, but not a deacon. Tertullian, De Bapt. c. 19, mentions Easter, and Apost. Const. v. 19, says baptizing your catechumens at Easter. Siricius to Himerius of Tarragona, A.D. 385, ap. Gratian III. Dist. iv. c. 11 : It is pure presumption for innumerable people, as you say, to receive the mystery of baptism at Easter, the Epiphany, and the festivals of apostles and martyrs, since with us and with all Churches the Lord's Easter and Pentecost alone claim this privilege. Leo, A.D. 447, *Ibid.* c. 12, 13, 14 ; Gelasius, *Ibid.* c. 17, 18 ; Concil. Gerund. A.D. 517, Can. 4 ; *Ibid.* c. 15 : As to baptizing catechumens it is decreed that because at the solemn time of Easter and Pentecost, when it is high tide few come to be baptized, only the sick may be baptized at other seasons, to whom baptism may at no time be denied. Concil. Matiscon. II. A.D. 585, Can. 3 ; Egbert's Excerpt. 10, A.D. 740 ; Concil. Clovesho. A.D. 747, Can. 13 ; Concil. Chelsea, A.D. 787, Can. 2 : That baptism be administered according to the canonical rules and not at any other time. Concil. Winton. A.D. 1071, Can. 7 : That baptism be celebrated at Easter and Whitsuntide only, except there be danger of death. Const. 3, Otho. A.D. 1237 : The two sabbaths before the resurrection of the Lord and Pentecost are appointed for the solemn celebration of baptism. Const. I. Othobon, A.D. 1268 ; Const. 4 Peckham, A.D. 1279 ; Lynd. 247.

(113). Gregor. Nazianzen Hom. 40 ; Victor de Vit. Hist. Pers. Vandal. II. 47 ; Patricii Syn. II. 19, in Haddan & Stubbs, II. 336.

or on any festival day which had a vigil (114). By using chrism, which has been consecrated by anticipation, baptism can however be given at other times, and the children of Christian parents, except those born within eight days of Easter or Pentecost, (115) are directed to be baptized without delay. (116) In cases of emergency adults may also be baptized at any time, (117) but such baptism is called clinical or bed baptism, (118) and is a disqualification for orders. (119) In the Roman Church the font is solemnly consecrated only at Easter and Pentecost, and the consecrated water is reserved for use afterwards. By English rule the font may not be solemnly consecrated even at Easter, unless a child is to be baptized therein, (120) and the consecrated water may not be kept in the baptistry for more than seven days. (121)

14. The proper place for the ministration of baptism is a

(114). Duchêsne, p. 283.

(115). Const. 10 Edmund, A.D. 1236; Const. 4 Peckham, A.D. 1279; Lynd. 243, 244, 246.

(116). Concil. Autissiodor. A.D. 578, Can. 18, however forbids children to be taken to other parishes to be baptized out of Easter. By Ine's law 2, A.D. 693, children were to be baptized within 30 days; by Edgar's law 15, A.D. 960, within 37 nights; by law 10 of Northumbrian priests, A.D. 950, within 9 nights; by Const. 4 Peckham, A.D. 1279, presently as they are born. Lynd. 247, assigns 4 reasons: (1) the uncertainty of life, (2) the devil's power over the unbaptized, (3) the importance of early training, (4) possible mistakes of parents if they have to give baptism in a hurry.

(117). Leo, ap. Gratian III. Dist. IV. c. 16: If any are overtaken by a sudden prospect of death, illness, siege, persecution, or shipwreck, they may be baptized at any time. Concil. Laodic. A.D. 363, Can. 47, requires them to receive instruction afterwards, if they survive. Egbert's Excerpt. 11 A.D. 740; Lynd. 241, 249; Concil. Gerund. A.D. 517, Can. 4, quoted note 112.

(118). Cyprian, Ep. 75, 13; Concil. Autissiodor, A.D. 578, Can. 18: It is not lawful to baptize any out of the solemn Eastertide except those in danger of death, who are termed bed men (grabatarii). Lynd. 243, 244.

(119). Concil. Neocaesarense Can. 12, A.D. 314, ap. Gratian I. Dist. LVII. Eusebius VI. 43, relates that it was not lawful that any one baptized in his sick bed should be ordained, but a dispensation was given to Novatus. A.D. 250.

(120). Can. 37 Elfric, A.D. 957: Let no oil be put in the font unless a child be baptized therein.

(121). Const. 10, Edmund, A.D. 1236: Let not the water in which a child has been baptized be kept in the baptistry above 7 days.

collegiate or mother church, (122) or, as it was formerly called, a baptismal church. (123) Such churches were often adjacent to fountains or streams, (124) which served for baptizing; but they were afterwards required to have baptistries of stone. (125) Baptistries were at first forbidden to conventual Churches; (126) but the prohibition was relaxed by custom. When lesser Churches acquired parochial rights, as they did in the 12th century, they were required to have a font for the baptism of children, (127) secured by lock and key, (128) in place of a baptistry; and baptism being forbidden out of Church, except to princes, or when access could not be had to one without peril, (129) fonts were also allowed in subordinate chapels. If baptism is admin-

(122). Concil. Vien. A.D. 1311, in Clem. Lib. v. Tit. x. c. 1. Lind. 241, calls the cathedral church the matrix or mother church. There were, however, other mother churches in the West.

(123). Const. 10 Edmund, A.D. 1236.

(124). Baeda I. 30, shows that many churches must have been converted heathen temples adjacent to wells which were formerly objects of worship. Edgar's Law 16, A.D. 960. In aftertimes many of these became holy wells or lady wells, such as Tideswell in Derbyshire, Chapelwell in Spreyside, Muswell near London, the Ladywell or Puit at Westminster, the Holywell at Walsingham. These wells were decorated on Sundays in May and August. Bridgett's Our Lady's Dower, p. 331. Duchêsne, p. 309, mentions a number of natural baptistries which filled themselves on the vigil of Easter.

(125). Const. 10 Edmund, A.D. 1236: In every baptismal church let there be a baptistry of stone.

(126). Gregory, A.D. 593, ap. Gratian, Caus. XVIII. Qu. II. c. 7, orders a baptistry to be removed from a monastery, and an altar to be put in its place. Concil. Gall. A.D. 616, Can. 5: That neither baptisms nor masses for dead secular persons be allowed within a monastery. Lynd. 190, 241.

(127). Const. 1 Langton, A.D. 1223; Const. 9 Edmund, A.D. 1236. It was apparently not contemplated that any but infants would be baptized in parish Churches.

(128). Const. 1 Langton, A.D. 1223; Const. 9 Edmund, A.D. 1236; Const. 1 Gray, A.D. 1250; Const. 4 Winch., A.D. 1305. Concil. Ilerd. A.D. 523, ap. Gratian III. Dist. IV. c. 106, requires every priest who is unable to provide a font of stone to have a suitable vessel exclusively reserved for baptism, and not to let it be carried out of the Church. Lynd. 241, 247.

(129). Concil. Vien. A.D. 1311, in Clem. Lib. III. Tit. XV.: We forbid that any be baptized in halls, or chambers or private houses, but only in churches which have special fonts for the purpose, except kings or princes, or such a necessity arises that recourse cannot be had to a church without danger. Lynd. 241.

istered privately, the water used should be thrown into the fire, or else carried to the Church and there poured away, and the vessel in which it was administered applied to ecclesiastical purposes in honour of the sacrament. (130)

15. Whenever baptism has been imperfectly or irregularly received it should be afterwards supplemented by the ordinances of the Church. Whenever it has been invalidly received it should be reconferred (131). The Roman rule adopted by Archbishop Peckham requires the ceremonies of the catechumenate, exorcism and catechism, to be gone through after private baptism (132), but the old English rule only required those parts to be supplied which come after the catechumen's unction. (133) After irregular baptism, received at the hands of heretics or schismatics, the recipients should be reconciled to the Church and receive the baptism of the Spirit (134) either by the imposition of

(130). Const. 10 Edmund, A.D. 1236: If a child have been baptized by a layman at home let that water, in honour of baptism, be either thrown into the fire or carried to Church, in order to be poured into the baptistry, and let the vessel in which baptism was performed be burnt or deputed to the use of the Church.

(131). Concil. Nic. A.D. 325, Can. 19: A decree has been made that Paulianists returning to the Catholic Church be rebaptized. Concil. Constant. A.D. 382, Can. 7: The Eunomians who are baptized with only one immersion, the Montanists or Phrygians and Sabellians we receive as we do pagans. [the reason being that in all these cases (1) the form of the Church was departed from (2) with intent to give a different baptism from that of the Church].

(132). Const. 3, Peckham, A.D. 1281: Let the exorcisms and catechisms be used over children so baptized in reverence to the ordinances of the Church. Gousset Théologie dogmatique II, 296, states that the Roman rite requires the exorcising of the baptized if they were not exorcised previously, but that the practice of many dioceses is otherwise.

(133). Concil. Westminster, A.D. 1200, Can. 3: If a layman baptize a child let all that follows after the immersion be performed by the priest. Const. 1 Langton, A.D. 1223. If children are baptized by laymen let the priest perform what follows the unction, not what goes before.

(134.) Innocent A.D. 415, ap. Gratian, Caus. XXIV. Qu. 1, c. 30: Heretics when they departed from the Catholic faith lost the perfection of the Spirit which they had received. *Id. Ibid.* Caus. 1, Qu. 1, c. 17, Augustin *Ibid.* III, Dist. IV, c. 29: The Church does not rebaptize heretics because they are baptized in the name of the Trinity. For that is the form of the sacrament. Therefore when they return they receive the power of the Holy Ghost, which those who are outside the Church have not. Pelagius II, *Ibid.* c. 30:

hands (135), or by unction (136), or by making a public confession of the true faith (137), the baptism itself being otherwise good (138).

Those who have been baptized in the name of the Trinity you will hasten to associate to the Catholic faith by bestowing the sole favour of reconciliation.

(135). Dionysius of Alexandria in Euseb. VII, 2, says this was the ancient practice. Also Stephen of Rome in Cyprian Ep. 73; Concil. Arelat. A.D. 314, Can. 8: If they find a heretic has been baptized in the name of the Father, the Son and the Holy Ghost, let hands only be laid on him. Leo. A.D. 458, ap. Gratian III. Dist. IV. c. 38: Let not those be rebaptized who have in any way received the proper form of baptism, but by imposition of hands and the power of the Holy Ghost [thereby conferred] which they could not receive from heretics, let them be joined to the Catholic Church. *Id. Ibid.* Caus. I, Qu. 1, c. 51.

(136). Gregory, A.D. 601, ap. Gratian III, Dist. IV, c. 44: We have learnt from the ancient rule of the fathers that those who have been baptized in heresy in the name of the Trinity, when they return, should be received into the bosom of the Church, either [1] by anointing with chrism, or [2] by the imposition of hands, or [3] by simple profession of faith. Accordingly the Western Church receives the Arians by a simple imposition of hands, the East by anointing with chrism.... The Monothelites and others it receives upon a simple confession of the truth. Devoti Lib. II. Tit. II. §. 27. On the other hand Apost. Const. 68, allows reordination because "those who are either baptized or ordained by heretics can be neither Christians nor clergymen."

(137). Dionysius of Alexandria, A.D. 254, in Euseb. VII. 7: Heretics were not admitted again by him although they intreated much, until they had publicly declared all that they had heard from their adversaries, and then indeed he admitted them to communion without deeming another baptism necessary for them. Concil. Nic. A.D. 325, Can. 8: If Puritans [*i. e.* Novatians] come over to the Catholic and Apostolic Church, the holy synod decrees that they who are ordained shall continue in the clergy, having first professed in writing that they will communicate with those who have married a second time, and with such as having lapsed in persecution have had a certain time of penance alloted them. Concil. Constant. A.D. 382, Can. 7: We receive Arians, Macedonians, Sabbathians and Novatians who call themselves Puritans and continents, and Quartodecimans and Apollinarians, if from being heretics they come over to the orthodox faith and give in a written renunciation of their errors by sealing them with the sacred unction on the forehead, the eyes, the nose, the mouth and the ears, saying, The seal of the gift of the Holy Spirit.

(138). Augustin contra Parmenian II: But although baptizing should be usurped not of necessity, and be given by anyone to anyone, what has been given cannot be said not to have been given, although it may rightly be said to have been irregularly (illicite) given.

16. When baptism has been once validly received, it may not be repeated, ([138a]) even though it were received at the hands of a non-Christian, ([139]) because it is sacrilege to treat the invocation or confession of the Holy Trinity as a nullity. ([140]) The iteration of it constitutes a disqualification for orders. ([141]) When, however, a doubt exists whether it has been validly received, the Western Church since the 12th century directs it to be conditionally reconferred. ([142]) When it is mistakenly

(138a). Concil. Carthag. I. A.D. 347, Can. 1 ; Concil. Carthag. II. A.D. 397, Can. 38, ap. Gratian III. Dist. IV. c. 107 and Caus. XXIV. Qu. I, c. 40 : Re-baptizing, re-ordination and translation of bishops are forbidden. Leo. *Ibid.* Can. I. Qu. I. c. 57: That the washing once received be not violated by iteration because the apostle says, There is one Lord, one faith, one baptism. Augustin, *Ibid.* III. Dist. IV. c. 32, 43 ; Theodori Poenit. II. IV. 4 in Haddan & Stubbs III, 193 : Gregory Nazianzene said that second baptism is a baptism calling for tears. Baeda, A.D. 731, ap. Gratian III. Dist. IV. c. 51.

(139). Theodori Poenit. II. II. 13, A.D. 673, in Haddan & Stubbs, III. 192 : If an ordained priest discovers he has not been baptized let him be baptized and reordained, and all whom he previously baptized be re-baptized. The same is repeated I. IX. 12, *Ibid.* III. 185, with this addition : It is stated that another decision has been given on this point by the Roman pontiff, according to which the grace of baptism is not conferred by the man who baptizes, although he be a pagan, but by the Spirit of God. See note 110 above. Nicolaus I. A.D. 865, ap. Gratian III. Dist. IV. c. 24 : You say that many in your country were baptized by a Jew who may have been a Christian or may have been a pagan, and ask what ought to be done. If such have been baptized in the name of the Trinity . . . they ought not to be re-baptized.

(140). Augustin ap. Gratian III. Dist. IV. c. 28 : Ne S. Trinitatis invocatio vel confessio annulletur. Concil. Rothomag. A.D. 650, Can. 5.

(141). Theodori Poenit. I. IX. 11. l. c. p. 185 : Those who have been twice baptized in ignorance need not do penance. Only, according to the canons they cannot be ordained.

(142). Theodori Poenit. II. IX. 3. l. c. p. 197 : Whoever has a doubt about his baptism let him be baptized. Alexander III. A.D. 1180, in Decret. Lib. III. Tit. XLII. c. 2 : Concil. Westminster, A.D. 1200, Can. 3 : We charge according to the holy canons that the sacraments of which there is a doubt be conferred. Const. 1, Langton, A.D. 1223 ; Const. 11, Edmund, A.D. 1236 : If he find by full evidence that baptism was given in the form of the Church let him approve the fact, whether he did it in Latin, French, or English. But if not let him baptize the child. Const. 3 Peckham, A.D. 1281 : If the priest doubt whether the child was baptized

believed to have been received by one who lives a Christian life, the Church treats such an one as baptized with the baptism of desire, (143) and for this reason the children of Christian parents, brought up among Christian surroundings, are presumed to be baptized unless the contrary is made to appear. (144)

## Confirmation.

17. Of the various sacramental signs whereby baptism is bestowed in its integrity, some may be administered by any Christian, such as the washing with water for the remission of sins. Others require a deacon or presbyter, such as anointing the body with oil, or the head with chrism, to give the strength or the presence of the Spirit. (145) Others, again, require the intervention of the bishop as chief representative of the Church (146), such as touching the head with oil or the hand,

in due form let him observe the manner in the decretal [of Alexander], together with the exorcism and catechism, saying: If thou art baptized I do not re-baptize thee. If thou art not baptized "I christine thee in the Faders name, the Sonnes name," &c.

(143). Innocent III. in Decret. Lib. III. Tit. XLIII. c. 2. See above notes, 22 and 110.

(144). Innocent III. l. c. Lynd. 245.

(145). Joel II. 28, Acts II. 17, 18.

(146). Cyprian Ep. 72, 9, ad Jubian: Because they had obtained a legitimate baptism there was no need that they should be baptized any more, but only that which was lacking was performed by Peter and John, viz., that prayer being made for them and hands imposed, the Holy Spirit should be invoked and poured out upon them. Which now, too, is done among us so that they who are baptized in the Church are brought to the prelates of the Church, and by our prayers and by the imposition of hands obtain the Holy Spirit, and are perfected with the Lord's seal. Apost. Const. III. 16: Thou, therefore, O bishop, shalt anoint the head of those that are to be baptized, whether they be men or women, with the holy oil for a type of the spiritual baptism. After that either thou, O bishop, or a presbyter that is under thee, shall in the solemn form name over them the Father, Son, and Holy Ghost, and shall dip them in the water and let a deacon receive a man and a deaconess the woman. After that let the bishop anoint those that are baptized with ointment. Innocent III. A.D. 1204, in Decret. Lib. I. Tit. XV.

to ratify the completion of the catechumenate, and anointing the brow with chrism to give the perfection of the Spirit, called the Lord's seal. (147) The bishop's part in the solemnity, when administered separately, as became the custom in rural churches in the West after the 4th century (148), was termed the laying on of hands (149), chrismation (150), consignation (151), or the benediction (152), by the Greeks the sacrament of the ointment (*μύρον*), in this country bishoping (153) and now most commonly confirmation (154).

18. Confirmation may therefore be said to be a sacramental rite which is part of and the completion of the sacrament of baptism (155). It consists (1) in the bishop laying his hand

(147). Concil. Constant. A.D. 382, Can. 7 : Sealing them with the sacred unction . . . . . and saying : The seal of the gift of the Holy Spirit. Concil. Laodic. A.D. 363, Can. 48 : It behoves baptized persons to be also made partakers of the heavenly sealing and the Kingdom of Christ. Theodoret on the Canticles, Lib. IV. : They receive the anointing of spiritual ointment as it were a kind of seal of the Kingdom being made partakers of the invisible grace of the most Holy Spirit by the ointment as it were under a figure.

(148). Hieronym. adv. Luciferian. c. 4.

(149). Concil. Elib. A.D. 305, Can. 38 : Let him bring him to the bishop so that [lay baptism] may be completed by the laying on of hands. Augustin cont. Donatistas II. c. 16. Leofric Missal, p. 222.

(150). Leo Serm. 4 De Nativitate calls it Chrisma salutis.

(151). Gelasian Sacramentary, ap. Muratori, I. 571 : Ad consignandum imponit eis manum. Duchêsne 327 observes that usually the Roman Church speaks of the rite as imposition of hands, the Gallican Church as chrismation or consignation.

(152). Concil. Elib. A.D. 305, Can. 77 : If a deacon baptise apart from a bishop or priest let the bishop complete the baptism by the benediction, Leofric Missal, p. 222 : Ecce sic benedicitur omnis homo.

(153). Can. 17, Elfric, A.D. 951.

(154). Maldonatus refers this name to Ambros. Lib. De Initiandis, c. 7. The same term is used of giving the cup in the Eucharist and of anointing the bishop's hand at ordination.

(155). Cyprian, Ep. 71, 1: "It is a small matter to lay hands on them that they may receive the Holy Ghost, unless they receive also the baptism of the Church ; for then finally can they be fully sanctified if they be born of each sacrament." Baeda II. 2, relates that in 603 A.D. one of the three demands addressed by Augustine to British Christians was that they should complete baptism (ut ministerium baptizandi . . . . compleatis) according

on the head of one who has been already anointed with the catechumen's oil (156), and then (2) after a solemn prayer signing his brow with chrism with the sign of the cross (157). The laying on of the hand was formerly given by uplifting the hands over all the candidates at once, the final touch by giving each one a slap on the cheek (158). At the signing with chrism each one was addressed by his Christian name to show that he was thereby admitted to the communion of saints (159).

19. The essential matter in confirmation is a subject of dispute. By some it is held to consist in the touch of the bishop's

to the Roman use. Theodori Poenit. II. IV. 5, in Haddan & Stubbs III. 195 : We believe no one can be perfect in baptism without the bishop's confirmation, but we do not despair [Conf. Concil. Elib. Can. 77 : If they depart this life without confirmation they can be justified by the faith by which they believe]. Pseudo-Isidor ap. Gratian III. Dist. v. c. 3 : These two sacraments [baptism and confirmation] are so closely bound up together that, unless death intervene, neither can be separated from the other.

(156). Apost. Const. III. 15 : Only by the laying on of the hand the bishop shall anoint a woman's head [pre-baptismal anointing]. Concil. Elib. A.D. 305, quoted note 149. Duchêsne, 319 ; Perrone Praelect. 51.

(157). Apost. Const. II. 32, quoted note 39. The second act includes the anointing, signing, and laying on of hands of Tertullian De Resc.

3. Baeda Op. Min. p. 277, says : (1) placing his hand on the head of each, (2) anointing it with chrism which he had blessed. These two acts he calls impositio manus in Vita Cuthberti XXXII. p. 109. Ordo Romanus ap. Hittorp. p. 84 : Let the bishop, whilst the archdeacon holds the chrism, (1) raise and lay his hand upon the heads of all, and say over them the prayer (orationem) invoking the sevenfold grace of the Spirit, and (2) then having dipped his thumb in chrism sign the cross on the forehead of each. Wordsworth's Pontifical of S. Andrew, p. 66 : Primitus (1) impone manum super caput et (2) tanges eum vel eam [sc. chrismate]. Ordo S. Amandi, A.D. 800, ap. Duchêsne, p. 453, describes infants being anointed with oil after baptism by the priest, and then confirmed by the bishop : (1) dicendo orationem et tangendo capita ipsorum de manu. Deinde, (2) pontifex revertit ad infantes priores et facit crucem de crisma cum pollice.

(158). Durandus, VI. 84, 6 : This slap represents the imposition of hands because the apostles confirmed by imposition of hands. Devoti Lib. II Tit. II. § 42, traces the practice back to the time of Gregory.

(159). Apost. Const. II. 32, refers to this : By the bishop the Lord, in your illumination, testified by the imposition of the bishop's hand, sent

hand (160) whereby the recipient is confirmed or strengthened for the Christian fight (161); by others in signing with chrism, (162) whereby he receives the perfection or the sevenfold gifts of the Spirit (163); by others again in both acts. Since the laying on of hands, as practised in mediæval times, preceded the signing with chrism, it clearly represents the completion of the catechumenate (164) rather than the imposition of hands, which after the anointing with chrism completed baptism. It cannot, therefore, have been the essential part of confirmation. If, nevertheless, a laying on of hands is held to be essential to communicate the effect of the Church's corporate prayer, such a laying on is universally allowed to be given in signing with chrism; (1) because chrismation involves direct con-

out the sacred voice upon every one of you, saying: Thou art my son, this day have I begotten thee.

(160). Sirmond, and others, because it is said, Acts viii. 16, 17: *τότε ἐπετίθουν τὰς χεῖρας ἐπ' αὐτούς.* Craisson, § 3335. Pseudo-Urban Epist. c. 7: All the faithful ought to receive the Holy Spirit after baptism by imposition of the hand of the bishop.

(161). Pseudo-isidor. ap. Gratian III. Dist. v. c. 2: In baptism we are regenerated to life, after baptism we are confirmed to fight. In baptism we are washed, after baptism we are strengthened. And, although the benefits of regeneration suffice for those who go straight forward, the helps of confirmation are necessary for those who will conquer.

(162). Tertullian, De Bapt. c. 7: The unction runs down carnally, but profits spiritually. Cyril. Catech. Myst. XIX.: While thy body is anointed with visible ointment thy soul is sanctified by the holy and life-giving Spirit. Syn. Rom. ad Gallos, A.D. 384, Can. 8: The chrism poured on the head imparts a grace to the whole body. Apost. Const. VII. 43: When he has baptized him he shall anoint him with ointment, adding a prayer [as follows]; c. 44: for this [anointing] is the efficacy of the laying on of hands to each one. Craisson, § 3337. See Sacraments, note 83.

(163). 2 Cor. i. 21, 22; Rabanus ap. Gratian, III. Dist. v. c. 5: By the imposition of hands of the high priest the Paraclete is given to the baptized that he may be strengthened by the Holy Spirit to preach to others that gift which he himself has received in baptism. For the baptized is signed with chrism by the priest on the top of the head, but by the bishop on the brow to signify by the former unction the descent of the Holy Spirit to consecrate a habitation for God; and to declare by the latter that the sevenfold grace of the Holy Spirit, with all the plenitude of holiness and wisdom and virtue, has been bestowed on him. Amalarius De Eccl. Offic. I. 12.

(164). See above, § 4.

tact with the hand of the administrator, ([165]) and indirect contact with the hand of the consecrator of the chrism; and (2) because by the benediction the effects of prayer and fasting have been imparted to the chrism, and are through it conveyed to the person confirmed. On the other hand the laying on of hands is held to suffice without chrism in the case of those who have already been anointed at baptism ([166]). Hence, confirmation need not be repeated if the bishop has used the catechumen's oil by mistake for chrism; but in such a case the Roman Church requires the missing parts to be afterwards supplied ([167]). The Western Church anoints the brow only, ([168]) the rest of the body having been already anointed at baptism. The Greeks, who administer baptism and confirmation together, anoint the eyes, ears, mouth and nose, and at one time anointed also the breast, the hands, and the feet ([169]).

(165). Innocent III. A.D. 1204, in Decret. Lib. I. Tit. XV. § 7: By impressing chrism on the brow the imposition of hands is expressed, which is also called confirmation because thereby the increase of the Spirit is given and strength. Therefore, while a simple presbyter can give other anointings, none but the high priest, *i. e.* the bishop, can give this one, because it is said only of the apostles, whose representatives bishops are, that they gave the Holy Spirit by the imposition of hands, as is clearly set forth in the Acts of the Apostles. Innocent IV. in Gousset, Théologie dogmatique, II. 306, says: Chrismation represents imposition of hands. Michael Palaeologus and the Greek bishops state, writing to Gregory X. at the Council of Lyons, A.D. 1274: Aliud est sacramentum confirmationis, quod per impositionem manuum episcopi conferunt chrismando renatos. Lynd. 43, 40; Palmer's Orig. II. 207.

(166). Tertullian De Bapt. c. 8; Concil. Araus, A.D. 441, Can. 2: With us it is sufficient to be once anointed with chrism. But let the bishop (sacerdos) have notice given him at confirmation of one who for any cause whatsoever has not been anointed with chrism at baptism. For among all there is but one benediction of the chrism, so that without prejudice to anything a repetition of the chrismation is not necessary. Natalis Alexander Saec. II. Diss. X. Baeda in Ps. xxix.: That anointing which is given by the imposition of hands by the bishop, and is called confirmation.

(167). Innocent III. in Decret. Lib. I. Tit. XVI. c. 1.

(168). Augustin, in Ps. 141, says because shame shows itself in the brow, and the Christian must not be ashamed to confess Christ.

(169). Concil. Const. A.D. 382, Can. 7; Cyril. Catech. Myst. XXI.

20. The essential form is also a matter of difference. By some it is held to consist in the words with which the signing with chrism is administered ([169a]); by others in the prayer for the sevenfold gifts of the Spirit, which immediately precedes the signing with chrism ([170]); by others again in the prayer whereby the chrism is hallowed. Since it is universally held that, for the chrism to be efficacious, it must be properly hallowed ([171]) it would seem to follow that the prayer hallowing the chrism (which represents the solemn personal benediction of the neophyte of earlier times) must be the essential form which constitutes the sacrament. The prayer for the sevenfold gifts of the Spirit superadded at the time of administration is then only a reduplication rendering the sacrament more solemn to the individual recipient. When hallowed chrism is not used, the latter prayer is itself the essential form.

21. Since every sacramental communication of the Spirit requires prayer and fasting on the part of the whole Church, the hallowing of the chrism, to be the sacramental means of such communication, is a most solemn act, and can only be performed by the bishop ([172]) assisted as in ordination by all the presbyters and people ([173]). At Alexandria none but the patriarch hallowed the chrism, all the metropolitans and bishops of the patriarchate assisting him in so doing. In the West it is hallowed by every bishop. The Gallican Church permitted the hallowing at any time when it was wanted ([174]), but usually hallowed it on "Unction-day," the Sunday before Easter.

(169a). Devoti, Lib. II. Tit. II. § 30.

(170). Leofric Missal. p. 222.

(171). Dionys. Areop. de Eccles. Hier. II. 2, calls the *μύρον θεουργικώτατον*.

(172). Concil. Carthag. II. A.D. 390, Can. 3, *Ibid.* Caus. XXVI. Qu. VI. c. 1: Let not the consecration of the chrism be effected by presbyters. Concil. Carthag. III. Can. 36, A.D. 397, *Ibid.* c. 2: Never let a priest hallow the chrism. Concil. Hispal. II. A.D. 619, *Ibid.* 1 Dist. CXVIII. c. 4: forbids a priest to hallow the chrism.

(173). Basil. de Spir. Sanct. c. 37: We bless the water of baptism and the oil of unction. Leofric Missal. 222: Benedicat et domnus papa et omnes presbyteri.

(174). Concil. Tolet. 1 Can. 20, A.D. 400, and Concil. Martini. A.D. 572, Can. 51, declare that a bishop may at any time consecrate the chrism and send it to the priests in his diocese.

The Roman Church limits it to one day in the year, Maundy Thursday at the close of the Lenten fast (175). In exceptional cases presbyters have, however, been authorized to hallow it (176), and this was the practice in Africa in the 5th century (177).

22. As the bishop is the proper person to hallow the chrism, so he is also the proper person to administer confirmation (178). In the East and in the Gallican Church (179), and in the Roman Church by way of exception (180), presbyters are permitted to confirm using chrism which has been solemnly consecrated by the bishop, and everywhere they may give the lesser confirma-

(175). Menard in Not. Lib. Sacr. Gregorii, p. 263; Bona Rer. Lit. Lib. I. c. 18, § 6, and Martene De Antiq. Rit. Lib. I. c. 3, art. 3, state that in the 7th century one of the three solemn offices of the bishop on Maundy Thursday was to hallow the chrism. The other two as Devoti Lib. II. Tit. II. § 39, explains were to reconcile penitents and to celebrate the Lord's Supper. Isidor, *Ibid.* III. Dict. III. c. 18; Leofric Missal. A.D. 1040, p. 258, gives the form of the three offices. Honorius in Decret. Lib. I. Tit. XLI. c. 12, directs a bishop to hold one Eucharistic celebration on Maundy Thursday for the consecration of the chrism. Const. 21 Othobon, A.D. 1268, and Const. 6 Peckham, A.D. 1279: The consecration of the chrism is annually to be performed by the bishop, and the same we take to be understood of the holy oil of the catechumens. Const. 2, Reynolds, A.D. 1322.

(176). Apost. Const. VIII. 29: Let the bishop bless the water or the oil; but if he be not there let the presbyter bless it. Perrone Prælect. 51, Craisson § 1715, give instances of missionary priests having been authorized by the pope to consecrate the chrism. Liebermann, Inst. Theol. VI. 224, 231.

(177). John the deacon's letter to Senarius, c. 8, A.D. 496.

(178). Concil. Elib. A.D. Can. 35 & 77; Innocent A.D. 426, ad Decret. ap. Gratian III. Dist. IV. c. 119: Hæc pontificibus solis deberi ut vel consignent vel Paracletum Spiritum tradant; Gelasius A.D. 494, ap. Gratian I. Dist. XCV. c. 2, censures priests for assuming to give it. Gregory, *Ibid.* c. 1: It has reached our ears that some have been offended because we forbad presbyters to mark the baptized on the brow with chrism . . . .Where there are no bishops we permit presbyters so to do. *Id. Ibid.* III. Dist. IV. c. 120; Nicolaus ad Hincmar Ep. 70, Pseudo-Isidor. *Ibid.* III. Dist. V. c. 2: Confirmation is administered by the greater, *i.e.* by the chief pontiffs and may not be given by the lesser priests. Innocent III. in Decret. Lib. I. Tit. IV. c. 4; Lynd. 40.

(179). Concil. Araus. A.D. 441, Can. 1, 2; Concil. Tolet. A.D. 400, Can. 10; Concil. Epaon. A.D. 517, Can. 16; Concil. Brac. II. A.D. 572, Can. 52.

(180). Eugenii IV. Decretum ad Armenos, A.D. 1439.

tion, which consists in anointing the head but not the brow with chrism after baptism. For this purpose the bishop is required to supply them with chrism gratis ([181]). In the Gallican Church rural priests are enjoined to fetch it at any time after midlent ([182]) from their own bishop but not from a stranger ([183]), and incumbents of greater churches after Easter; ([184]) and when they have obtained it to keep it under lock and key. ([185])

23. All who have received the saving laver and have not yet been confirmed are proper subjects for confirmation, and it should be given to them as soon as possible after baptism, whether they are adults or children. Parents should be exhorted to bring their children to the bishop for this purpose whenever he is in the neighbourhood ([186]), and adults be reminded that confirmation is necessary for spiritual perfection,

(181). Concil. London, A.D. 1126, Can. 2: We charge that no price be demanded for chrism oil, etc. Concil. Westminster, A.D. 1138, Can. 1; Concil. London, A.D. 1175, Can. 7; Concil. Westminster, A.D. 1200, Can. 8; Concil. Lat. IV. A.D. 1215 in Decret. Lib. V. Tit. III. c. 42; Const. 27 Langton, A.D. 1222: To demand anything for chrism or the holy oil we judge to be unreasonable. Const. 7 Edmund, A.D. 1236; Const. 2 Othobon, A.D. 1268, Lynd. 74, 268.

(182). Concil. Martini, A.D. 572, Can. 51; Concil. Antissiodor, A.D. 578, Can. 6, requires priests to fetch it after midlent. If they are not well enough to go to fetch it they should apply to the archdeacon or his deputy, and carry with them a chrismatory wrapped in linen.

(183). Stat. Eccl. Ant. A.D. 505, Can. 10, ap. Gratian I. Dist. XCI. c, 4: Let presbyters who rule Churches in self-governing districts (per dioceses) fetch the oil every year after Easter not from any but from their own bishops, not by one of the junior clergy but either in person or by the hand of him who presides over the sacristy (sacrarium); also III Dist. IV. c. 123; Concil. Vas. I. A.D. 442, Can. 3.

(184). Stat. Eccl. Ant. Can. 10, quoted above.

(185). Const. 3 Reynolds, A.D. 1322: Let the holy oil and chrism be kept safely under lock and key.

(186). Edgar's Law, 15 A.D. 960: That no one too long remain unbishoped. Const. 2 Reynolds, A.D. 1322: Let priests often exhort the people to have their children confirmed: for that sacrament ought to be received after baptism. If the person to be confirmed be adult he is to be admonished by the priest of the place first to go to confession and then to be confirmed. And let him come fasting to confirmation in honour to that sacrament. And let parents be often admonished by the priests to carry their baptized children to the bishop for confirmation and not stay long for

although it may not be for salvation. Without confirmation or a desire for it none may be admitted to communion (187), but when it is desired and cannot be had, death can take its place in the case of those who have passed innocently through life (188). When it has once been received it impresses a character on the soul, and may not therefore be repeated without sacrilege (189).

24. Those who have come to years of discretion (190) without receiving it, should prepare for it by fasting and confession (191). The canons require some person other than the parent to stand by and hold the candidate at the time he is confirmed (192), who thereby contracts the same spiritual relationship that a

the coming of the bishop, but carry them to him when he is in the neighbourhood as soon as may be after baptism, and carry fillets sufficiently large along with them. Lynd. 34 explains that as soon as possible means within six months, and p. 32 that the neighbourhood means within seven miles.

(187). Innocent III. in Decret. Lib. III. Tit. XLIII. c. 3; Const. 4, Peckham, A.D. 1281: Many neglect the sacrament of confirmation for want of watchful advisers .... To cure this damnable neglect we ordain that none be admitted to the sacrament of the Lord's Body and Blood that is not confirmed, except at the point of death, unless he have a reasonable impediment. Lynd. 40.

(188). Concil. Elib. Can. 79, quoted note 155; Pseudo-Isidor, ap. Gratian III. Dist. v. c. 1, compare Theodori Poenit. II. IV. 5: but we do not despair. Perrone, Praelect. 55. Treatise on rebaptism, A.D. 255, c. 4.

(189). Concil. Tarracon. A.D. 813, ap. Gratian III. Dist. v. c. 8; Const. 2 Reynolds, A.D. 1322: Let parents take care that they do not a second time offer their children to be confirmed, because the children, if males, are by the repetition of the sacrament made irregular, and the parents by such neglect are by the canons liable to severe punishment.

(190). Const. 2 Reynolds, A.D. 1322, quoted above, Lynd. 34, 36, states that adult means 14 years of age.

(191). Concil. Aurel. 511, ap. Gratian III. Dist. v, c. 6: Let those of perfect age come fasting to confirmation, and be exhorted first to confess that they may be pure to receive the gift of the Holy Spirit and know that no one is ever a Christian unless he has been marked with chrism by episcopal confirmation. Const. 2 Reynolds, A.D. 1322.

(192). Pseudo-Isidor. ap. Gratian, Caus. XXX. Qu. I. c. 1; Cnut's Law 22, A.D. 1017; Concil. Westminster, A.D. 1200, Can. 3; Const. 2 Reynolds A.D. 1322; Lynd. 33, says that this holding signifies the weakness of the baptized without the grace of confirmation. *Id.* 243 says that this rule applies to adults.

sponsor does in baptism (193). To treat the sacrament with becoming respect, it was the English rule to bind the forehead with a band or fillet over the spot touched by the chrism. This fillet was removed on the third day by the priest in Church and burnt (194).

### The Effects of Baptism.

25. The effects of baptism when administered in its integrity to qualified persons are threefold (195). Thereby (1) they obtain forgiveness of all their sins, both actual and original (196). They receive (2) the renewal of the Holy Ghost, *i.e.* the implanting of a new spiritual life in the case of adults, (197) or the germ of such a life as an inchoate power in the case of in-

(193). Const. 2 Reynolds, A.D. 1322: Let no child be held at confirmation by father or mother, step-father or step-mother. And our will is that this prohibition be often published in the Church by the priests that parents and others who hold children at confirmation may know that a spiritual relationship is contracted at this sacrament as well as at baptism. Lynd. 34, 242, 243.

(194). Const. 2, Reynolds: Let the children on the third day after confirmation be carried to church, that their foreheads may be washed in the baptistry by the priest's hand in honour to the chrism, and at the same time let the fillets be there burnt.

(195). Innocent III. A.D. 1205, in Decret. Lib. III. Tit. XLII. c. 3, says the effects of baptism are threefold: (1), guilt is forgiven, (2) danger is avoided, (3) the kingdom of heaven is entered, which he derives from the words Unless a man is born again, (1) of water, and (2) of the Spirit, he cannot (3) enter the kingdom of God. Ayliffe, 104, enumerates four. Lynd. 244, says that in baptism there are three things: (1) water as the means, (2) the forgiveness of sin as the effect, and (3) the character impressed on the soul.

(196). Rom. viii. 1: There is no condemnation to those who are in Christ Jesus (by the baptismal initiation). 1 Cor. vi. 11; Justin, c. 61; Iren. Frag. 34: As we are lepers in sin we are made clean by means of the sacred waters and the invocation of the Lord from our old transgressions. Cyprian adv. Judæos III. 65: All sins are put away in baptism. Augustin ap. Gratian III. Dist. IV. c. 81: In baptism there is a washing off of all past sins. Therefore, Ambros. *Ibid.* c. 99, says that penance is not necessary for those who have been baptized. Codex Eccles. Afric. 110.

(197). 1 Pet. i. 2; 2 Thes. ii. 13; 1 Cor. vi. 11: Ye are washed, ye are sanctified. Titus iii. 5; Iren. Haer. v. 8, 1: We do now receive a certain

fants. (198) They are (3) admitted to the kingdom of heaven, or fellowship of those who share the divine life (199), in which by mutual sympathy and prayer they are aided in holiness. These effects imprint on them (4) an indelible character (200), in consequence of which they are called the people of God or laymen (201), and are said to be "a chosen generation, a royal priesthood, a holy people" (202). If baptism is administered

portion of His Spirit, leading towards perfection. Cyprian Ep. 62 (Oxf. 63) 8: By baptism the Holy Spirit is received. Origen de Prin. I. 1, 3: The Spirit is a sanctifying Power in which all are said to have a share who have deserved to be sanctified by his grace. Augustin ap. Gratian III. Dist. IV, c. 43, says that those baptized outside the Church have the form but not the virtue or baptism of the Spirit.

(198). Innocent III. l. c.: Some say that in baptism guilt is remitted, but grace is not conferred on infants; others, that sin is both remitted and virtues are infused as to the possession (habitum), but not as to the exercise (usum) of them before they come to years of discretion. Thomas Aquin. Pars. III. c. 69: Children and adults are alike made members of Christ, and receive an influx of grace and virtue from the Head; but a distinction must be made between the possession (habitus) and the exercise (usus). Liebermann VI. 192.

(199). Iren. Haer. v. 20, 2: It behoves us to flee to the Church to be brought up in her bosom. 1 John i. 3; Heb. XII. 23: Ye are come unto Mount Zion, etc. Origen contra Celsum, VII. 29, VIII. 5; Augustin ap. Gratian III. Dist. IV. c. 31, gives it as his opinion that this third effect is not received if baptism is received from a heretic or pagan. Cyprian Ep. 73 (Oxf. 74), 7.

(200). Augustin De Bapt. contra Donatistas III. 18, § 23: We do not change the baptism of heretics. Why? Because they have baptism in such wise as a deserter has his mark (character). So they, too, have baptism . . . And yet if the deserter, being corrected, begins to serve, doth anyone venture to change his mark? 1 John ii. 27: *τὸ χρίσμα ὃ ἐλάβετε ἀπ' αὐτοῦ ἐν ὑμῖν μένει.*

(201). Ps. lxxxii. 6; Iren. Haer. III. 6: Those who have received the grace of the adoption, by which we cry Abba Father, are called gods. 2 Pet. i. 4: *ἵνα διὰ τούτων γένησθε θείας κοινωνοὶ φύσεως.* Hippolyt. Haer. X. 31: God has elevated thee, O man, to His own rank by having made thee even God to His glory. *Id.* Theoph. c. 8: If man has become immortal, he will also be God.

(202). 1 Pet. ii. 9; Apost. Const. II. 25: Hear this, ye of the laity also, the elect Church of God. For the people were formerly called the people of God [Ex. xix. 5, 6] and an holy nation" [Heb. xii. 23]. You, therefore, are the holy and sacred Church of God enrolled in heaven a royal priesthood, an holy nation, a peculiar people [1 Pet. ii. 9], a bride adorned for

by force to an unwilling subject none of these effects follow, neither is the character received (203); if to an infant or unconscious subject, the effects are potential until they become actual through faith. A catechumen has not as yet received them. A penitent, although his sin is secret, has lost them until he is restored (204).

26. The baptised are a chosen generation or the elect (205), because they are not merely called as catechumens are (206), but by God's foreknowledge and preventing grace (207) are actually chosen out of the world (208) to be the sons of God (209),

the Lord God, a great Church, a faithful Church [Rev. xvii, 14]. *Ibid.* II. 57: Let the bishop pray for the people, and say: Save Thy people, O Lord, and bless Thine inheritance, which Thou hast obtained by the precious blood of Thy Christ, and hast called a royal priesthood and an holy nation. Tertullian De Pudic. 7: a sheep means a Christian, and the Lord's flock are the people of the Church.

(203). Innocent III. l. c. states that, if not actively desiring, he must at least passively consent, to receive baptism, because he who is baptized against his will neither receives the grace (res) of baptism nor the character.

(204). Augustin ap. Gratian III. Dist. IV. c. 36: Pro peccato pro quo agebat penitentiam amiserat sanctitatem sed non amiserat sacramentum.

(205). Acts ix. 13, xx. 28; John xv. 19; 1 Cor. i. 27, 28; James ii. 5; 2 John i. 1; Apost. Const. II. 23.

(206). Rev. xvii. 14, distinguishes (1) the κλητοί or called ones, (2) the ἐκλεκτοί or chosen ones [*i.e.*, the baptized], and (3) the πιστοί or faithful ones. Rom. viii. 28; 1 Cor. i. 2, 24; Eph. iv. 4.

(207). 1 Pet. i. 2; Rom. viii. 29; Gregory ap. Gratian, Caus. XXIII. Qu. IV. c. 21. Concil. Araus. II. 529, Can. 5, says the beginning of faith is not of ourselves, but of God's grace. Can. 6: That without God's grace present in us, which makes us believe and ask, mercy is not bestowed because it is grace itself which enables us to believe and ask. Can. 7: That by our own natural powers, without grace, we cannot think or choose anything availing to salvation. Boniface II, Ep. II. ap. Labbé IV. 1688: It is certain and catholic that in all good things, whereof faith is the chief, the divine mercy prevents us being yet unwilling, so that we may will; is present in us when we will; follows us also, that we may continue to the end.

(208). John xvii. 6, 9, 14, 16, 20, 21; 2 Thess. ii. 13.

(209). 1 John iii. 2; Justin Dial. c. Trypho c. 124; 2 Pet. i, 4: Being made partakers of the divine nature. Origin De Prin. I. 3, 7: There is a special working of God the Father besides that by which He bestowed upon all things the gift of natural life. *Ibid.* IV. 1, 29: Christ is in each individual

through whom God is glorified (210). This choice is however collective and corporate, because all are not Israel which are of Israel (211), and the elect include among their number tares as well as wheat, the unclean as well as the clean, since not all who are chosen are faithful, and both clean and unclean entered the ark of old through the same door (212).

27. They are also a royal priesthood because, having received the indwelling Spirit by the baptismal unction (213), and thereby been made partakers of Christ's priesthood (214) and

in as great a degree as the amount of his deserts allows. *Id.* contra Cels. I. 57: Every man who chooses good for its own sake is a Son of God.

(210). John xvii. 1; 2 Thes. i. 10; 1 Pet. iv, 11.

(211). Rom. ix, 6.

(212). Cyprian Ep. 50, 3, A.D. 251: Because we see that there are tares in the Church we should not therefore withdraw from the Church. De Unit. c. 20: Neither does being a confessor make a man free from the snares of the devil, nor does it defend a man who is still placed in the world with a perpetual safeguard from temptations and dangers...Otherwise we should never see in confessors those subsequent frauds and fornications. Augustin in Daniel of Winchester in Haddan & Stubbs III. 348, Gregory ap. Gratian, Caus. XXIII, Qu. IV. c. 15.

(213). Ps. cxxiii. 2; Eph. ii. 22: *ἐν ᾧ* [*sc. χριστῷ*] *καὶ ὑμεῖς συνοικοδομεῖσθε εἰς κατοικτήριον τοῦ θεοῦ ἐν πνεύματι.* Rom. viii. 9; 2 Cor. vi. 16; Pseudo-Isidor. quoted above, § 19. Tertullian De Bapt. c. 7: When we come forth from the font we are anointed according to the practice of the old discipline, wherein on entering the priesthood men were anointed with oil from a horn. Origen De Prin. I. 3, 7: The Holy Spirit will take up his dwelling not in all men but in those whose land has been renewed. For this reason was the grace and revelation of the Spirit bestowed by the imposition of the apostle's hands after baptism. Apost. Const. III. 15: The bishop shall anoint a woman's head as priests and kings were formerly anointed, not because those who are now baptized are ordained [Jewish] priests, but as being Christians or anointed ones from Christ the anointed a royal priesthood and an holy nation. Innocent III. in Decret. Lib. I. Tit. XV. § 6: Because Christ hath by His blood made us kings and priests unto God, for which cause Peter the Apostle says, Ye are a chosen race, a royal priesthood, therefore in the New Testament not only kings and priests are anointed but also all Christians... § 7: For Christ is so called from the anointing chrism, or rather the chrism is so-called from Christ .... But Christians are called after Christ, as anointed ones are derived from Him who is anointed.

(214). Rev. i. 6 and v. 10; Tertullian de Jejun. c. 11: We are all priests

kingship (215), the door of communication with heaven is always open to them. Hence the spirits of all good laymen are described as being altars, from which arises an incense which is spiritually sweet-smelling, viz. the prayers which ascend from a good conscience (216), and they are privileged to make offerings to God (217), not as though He stood in need of them, but to bring themselves into communion with Him (218). Nevertheless, the royal priesthood of Christians, like that of the Jews of old, is primarily collective and corporate. The offerings of individuals are not

of One only God the Creator and of His Christ. Augustin De Civ. Dei xx. 10: As we call all Christians by reason of the mystical chrism, so we call all priests because they are members of one Priest.

(215). Concil. Laodic. A.D. 363, Can. 48: That those who are enlightened ought after baptism to be anointed with the heavenly chrism and made partakers of the kingship of Christ. Rabanus ap. Gratian III. Dist. IV. c. 88: The baptised is anointed with chrism that he may be a partaker of Christ's kingdom.

(216). Origen contra Celsum VIII. 17: Clem. Strom. VII. 6: The altar is the congregation of those who devote themselves to prayers.

(217). Clem. Ep. 1 ad Cor. c. 41: Let every one of you offer a thank-offering to God in his own order . . . . not exceeding the rule of the ministry prescribed to him. Tertullian Exhort. ad Cast. c. 7: Are not even we laics priests? It is written A Kingdom also, and priests to God the Father hath He made us. It is the authority of the Church which has established the difference between the ruling body (ordo) and the laity [the ruling body sitting whilst the laity stand in conventions], and the honour given through the formal seating of the ruling body has been hallowed by God. Where there is no formal seating [out of Church and at home] you offer and baptize, and are priest alone for yourself. But where three are, a Church is, albeit they be laics . . . . Therefore, if you have the right of a priest in your own person in cases of necessity, it behoves you to have likewise the discipline of a priest whenever it may be necessary to have the right of a priest. Cyprian de Unit. Eccl. c. 12, De Orat. Dom. c. 4.

(218). Justin 1 Apol. c. 10: God does not need the material offerings which men can give. Dial. Trypho, c. 22: The temple God admitted to be His house, not as though He needed it. Iren. III. 20, 2: The object of the long-suffering of God was that man passing through all things and acquiring the knowledge of moral discipline . . . . might always live in a state of gratitude to the Lord . . . and might think of God in accordance with the Divine greatness. IV. 14, 1, and v. 2, 1: God is in want of nothing, but Man stands in need of fellowship with God, IV. 16, 4; 17, 1; 18, 1. Athenag. Ap. 13.

the sacrifice of the Church, nor are the prayers of individuals the prayers of the Church, but suffrages needing to be united to the suffrages of others before they can become effective as united prayers. (219) Although in cases of necessity a layman may baptize and indicate penance, yet under ordinary circumstances no one outside the official priesthood may do either; (220) nor may a layman under any circumstances hallow the oblation or give the greater or lesser blessing (221).

28. The baptized are also a holy people, because they have been brought under the discipline which makes for holiness by God's acquisition of them (222), by union with Christ whom they bear about and represent (223) and by the indwelling

(219). Clem Strom. VII. 7 : Cyprian De Orat. Dom. c. 8 : Before all things the Master of unity would not have prayer be made singly and individually . . . nor does each one ask that his own debt should be forgiven him. . . . but prayer is public and common.

(220). Heb. v. 4 : No one taketh this honour upon himself, but he is called of God as was Aaron. Cyprian De Unit. Eccl. c. 17, ap. Gratian I. Dist. XC. c. 3: Does he think that he has Christ who acts in opposition to Christ's priests, who separates himself from the company of his clergy and people? . . . who forsaking God's priests dares to set up another altar and to make actions with unauthorised words, to profane the truth of the Lord's offering by false sacrifices? Socrates I. 36, relates that the bishops took no notice of Asterius teaching heresy in public, because he was not enrolled in the catalogue of those admitted to holy orders, but they insisted that Marcellus, as a priest, should give an account of his book. Pseudo-Isidor. *Ibid.* Can. X. Qu. I. c. 7 : Because priests ought to pray for all whose alms and offerings they receive, how shall laymen presume to consume or give to others offerings which Christians make for their sins, since having no official position they ought not even to pray for the people (cum non debeant ex officio suo pro populo orare). *Id. Ibid.* Can. 1, Qu. 1, c. 81.

(221). Apost. Const. III. 10 : Neither do we permit the laity to perform any of the offices belonging to the priesthood, as, for instance, neither the sacrifice, nor baptism, nor the laying on of hands, nor the blessing either the smaller or the greater . . . . One to whom such an office is not committed, who seizes upon it for himself, shall undergo the punishment of Uzziah [2 Chron. xxvi.]; *Ibid.* ii. 27 : If Christ did not glorify himself without the Father how dare any man thrust himself into the priesthood who has not received that dignity from his superior?

(222). 1 Pet. ii. 9; Acts xx. 28 : Take heed . . . to feed the Church of God which he acquired for Himself (*περιεποίησατο*) by means of His own blood.

(223). Gal. vi. 17 ; ii. 20 ; Cyril Catech. IV. : We thus become Chris-

Spirit which sanctifies them (224). For this reason they are forbidden to place themselves or their fellow-Christians in close contact with pagans or Jews as servants or slaves (225); to take part in Jewish or heathen rites (226), to be on terms of intimacy (227),

tofers, *i. e.* bearers of Christ when we have received His body and blood into our members. Ignatius, Eph. 9: Ye are God-bearers, shrine-bearers, Christ-bearers, holiness-bearers. Iren. IV. 20, 12: The Church is sanctified by fellowship with His Son. Tertullian De Poenit. c. 10: In company of two is the Church, but the Church is Christ. When you cast yourself at the brethren's feet, you are handling Christ. When they shed tears over you it is Christ who suffers. Origen. De Prin. IV. 1, 29, quoted note 209.

(224). Iren. Frag. 26: Every man is either empty or full. If he has not the Spirit . . . . he has not received Jesus Christ the Light . . . . If he receives God, Who says, I will dwell with them and walk in them, such an one is not empty but full. Origen De Prin. I. 3, 8: On this account is the grace of the Holy Spirit present that those beings who are not holy in their essence may be rendered holy by participating in it. *Id.* cont. Celsum VIII. 18. Clem. Strom. VII. 5, says In them God is enshrined. Cyril Catech. XXI.: Ye were made Christs by receiving the sign of the Holy Ghost [*i. e.* the chrism].

(225). Egbert's Excerpt. 150 A.D. 740: It is unlawful that they be made bondslaves to Jews, whom Christ hath redeemed by the effusion of His blood. Ine's Law 8, A.D. 693: If one buy a slave or freeman of his own nation (though he be a malefactor) and send him over sea, let him pay his wer-gild and make deep satisfaction to God. Dunstan Can. 54, A.D. 963; Concil. Ensham, A.D. 1009, Can. 6; Cnut's Law 6, A.D. 1018: We forbid any Christian to be sold wholly out of the land or into a heathen country, lest the soul which Christ bought with His own life should perish. Concil. Westminster, A.D. 1102, Can. 27; Concil. Lat. III. A.D. 1179, Can. 26, in Decret. Lib. V. Tit. VI. c. 5: Jews and Saracens may not have Christian slaves in their houses . . . Let those be excommunicated who presume to dwell with them.

(226). Syn. Trull, A.D. 692, ap. Gratian, Caus. XXVIII, Qu. 1, c. 13: Let no one in Holy Orders, or layman, take part in the Jewish feast of unleavened bread, or dwell with Jews, or call in any one of them in sickness, or take medicine from them, or enter the bath with them. Egbert's Excerpt. 147, A.D. 740: That no Christian observe Pagan superstitions. If any man attend the lustrations of pagans let him do penance 5 years. Concil. Chelsea, A.D. 787, Can. 19. *See* Chapter on CRIMES.

(227). Concil. Agath. A.D. 506, Can. 40, ap. Gratian, l. c. c. 14: Let all clergy and laity avoid in future the entertainments of Jews, nor let any one invite a Jew to an entertainment. Concil. Matiscon, A.D. 581, Can. 15,

or to intermarry with non-Christians (228); to associate with catechumens in prayer (229), or to engage in degrading professions, such as those of jockeys, and actors (230). Although force may be used to retain those who are already Christians within the limits of duty (231), yet force is forbidden to be used to outsiders to increase their number (232).

### Duties of the Baptized.

29. By the baptismal profession Christians take upon themselves three obligations: (1) that of dissociating themselves from the devil; (2) that of associating themselves with the Christian body, and (3) that of knowing God and keeping his commandments (233). By the first they are pledged to avoid all

Egbert Excerpt. 146, A.D. 740: That no Christians presume to judaise or to be present at Jewish feasts.

(228). Cyprian De Laps, c. 6, censures men for "uniting in the bond of marriage with unbelievers." Concil. Arelat. I. A.D. 305, Can. 11, requires a girl to be excommunicated who marries a non-Christian. Concil. Agath. Can. 67, l. c. c. 16: It behoves not to intermarry with heretics, or to give them sons or daughters, but rather to receive their sons and daughters upon their undertaking to become Catholic Christians. Concil. Aurel. II. A.D. 533, Can. 19; Concil. Arvern. A.D. 535, Can. 4, l. c. c. 17: If any one by the marriage-tie is mixed up with Jewish depravity . . let him be separated from the company and fellowship of Christians.

(229). Apost. Const. VIII. 33: Let not one of the faithful pray with a catechumen, at least not in the house. Concil. Araus. A.D. 441. Can. 20, forbids catechumens to receive the blessing at private prayers.

(230). Concil. Arelat. A.D. 314, Can. 4 and 5, says jockeys and actors, Apost. Const. VIII. 32.

(231). Augustin, ap. Gratian, Caus. XXIII. Qu. IV. c. 1., 38, 40, 43; Innocent III. in Decret. Lib. III. Tit. XLII. c. 3.

(232). Apost. Const. II. 63; Concil. Tolet. IV. A.D. 633, ap. Gratian, I. Dist. XLV. 5; Gregory, *Ibid.* c. 4, Decret. Lib. V. Tit. VI. c. 9. Devoti Inst. Lib. II. Tit. II. § 28.

(233). Math. XIX. 17; Cyprian de Orat. Dom. c. 15: Now that is the will of God which Christ both did and taught; humility in conversation, steadfastness in faith, modesty in words, justice in deeds, mercifulness in works, discipline in morals, inability to do a wrong and ability to bear a wrong; to keep peace with the brethren, to love God with all the heart, to love Him

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unrighteousness and sin; by the second to conform to the Church's laws which under the Spirit's guidance (234) and in the exercise of the power committed to it by Christ have been framed for the good of all (235); by the last, to eschew many things which are allowed to others because they are not steps which lead to God (236), and to look on other things in a new light as things consecrated by God.

30. Sin is defined to be anything which is not consonant with

as a Father, to fear Him as God, to prefer nothing to Christ because He preferred nothing to us, to adhere to His love, to stand by His cross bravely . . . to exhibit in discourse constancy of confession, in torture confidence in battle, in death that patience whereby we are crowned. De Unit. Eccl. c. 2: How can we possess immortality unless we keep his commandments. Wulstan of York, ap. Whelock, 487: Let us always profess one true faith and love God with all our mind and might, and carefully keep his commandments and give to God that part of our substance, which by His grace we are able to give and earnestly avoid all evil, and act righteously to all others, *i. e.* behave to them as we would have others behave to us. He is a good Christian who observeth this. Cnut's Law, 30, A.D. 1018: Let every man do all he possibly can for the honour of his Lord, both in word and deed, always with cheerfulness.

(234). Athanasius, ap. Gratian I. Dist. XVI. c. 12, says of the synod of Nicaea: It seemed good to the bishops filled with the Holy Ghost. Hormisdas, *Ibid.* I. Dist. IV. c. 58: In the 318 bishops [at Nicaea] we believe the Holy Ghost spoke. In Socrates I, 9, the synodal letter of the council ends: Pray that the decisions to which we have come may be inviolably maintained thro' Almighty God and our Lord Jesus Christ, together with the Holy Spirit. Concil. Lugdun. I. A.D. 517, Can. 6: Those matters which have been treated of and determined by us by divine inspiration. Concil. Brac. II. A.D. 572: They indited canons by the mediation of the Holy Ghost. Concil. Tolet. VIII. A.D. 653, Can. 2, prays: Breathe on us O Holy Ghost.

(235). 1 Cor. VIII. 11; Concil. Chelsea, A.D. 787, Can. 6: That the judgments of bishops which have been confirmed by us or our predecessors by a synodal decree be not infringed, but remain firm and irrefragible. Lynd. 38, 11: He to whom a command is given is held under obligation to fulfil that command unless he has a just excuse. Cyprian De Unit. Eccl. c. 6 and Ep. 54 (Oxf. 59), 2, calls this upholding "the sacrament of unity."

(236). Iren. Haer. IV. 9, 3: There is one salvation and one God, but the precepts which form the man are numerous, and the steps which lead man to God are not a few. Tertullian De Pudic. c. 6; Iren. IV. 20, 5: It is not possible to live apart from life, and the means of life are found in fellowship with God; but fellowship with God is to know God and to enjoy His goodness.

the new life of faith (237). Hence sins are not confined to wrong actions, but include wrong intentions (238). Those which are done by persons responsible for their actions are called formal sins; those which are done without any intention to do wrong material or excusable sins (239), and those to which particular ages or classes of men are prone are called besetting sins (240). Formal sins are of two degrees (1) those which entirely interrupt the new life and introduce a state of enmity towards God called mortal sins (241); (2) those which mar but

(237). Rom. XIV. 23; Iren. IV. 39, 1: To obey God and to believe Him and keep His commandments, that is the life of man; not to obey God is evil, and this is death. Origen de Prin. I. 5, 7: Sin is swerving from rectitude and justice. Augustin ap. Gratian, Caus. XV. Qu. 1, c. 1: Sin is the wish to attain or retain that which right forbids.

(238). Tertullian De Poenit. c. 3: Every sin is matter of act or of thought. De Pudic. c. 6; Iren. II. 32, 1; Cyprian De Mortal. c. 17: In Cain the evil thought and intention were foreseen by a foreseeing God. Decret. Lib. V. Tit. XXXIX. c. 54: Evil deeds are distinguished by will and intention. Lynd. 236, 260: There must be a guilty mind to do a deed of guilt; 121: to constitute theft there must be animus furandi; 287, 322; Devoti Lib. II. Tit. II. § 2.

(239). Iren. IV. 31, 2: The daughters of Lot acted thus after their simplicity and ignorance . . . Wherefore they are to be held excusable. Gratian I. Dist. VI. c. 2: Every sin is completed by three steps [1] the bare suggestion; [2] the being pleased with the suggestion; [3] the consenting to the suggestion. The suggestion comes from the delight, the pleasure it creates from the flesh, the consent from the spirit. Augustin, *Ibid.* Caus. XXIII. Qu. IV. c. 23 and Caus. XXXIII. Qu. III. Dist. II. c. 21 and Dist. I. c. 71; Theodori Poenit. 1, VII. 4, A.D. 673, in Haddan & Stubbs, III. 182: It is a [simple] indulgence of evil thoughts when they are neither carried into execution nor assented to.

(240). Iren. Haer. II. 24, enumerates 5 ages in life, and Lynd. 303, enumerates the besetting sins of boys, old men, noblemen, legal men, mechanics and the poor.

(241). Gal. V. 19, mentions sins which exclude from inheriting the kingdom of heaven. Origen De Prin. I. 2, 4; contra Celsum I. 3; Iren. Haer. V. 27, 2: To as many as continue in love towards God does He grant communion with Him. But communion with God is life and light . . . But on as many as according to their own choice depart from God He inflicts that separation, which they have chosen of their own accord. But separation from God is death. Tertullian De Pudic. c. 2, distinguishes (1) sins which are remissible, and (2) sins which are irremissible. Augustin, ap.

do not interrupt the life of grace called venial sins. There are usually said to be seven mortal sins (242), viz. pride, envy, anger, indifference or accidia, covetousness, gluttony, luxury. The enumeration is not however uniform, nor has the term mortal sin always meant the same thing (243). In the earliest times only idolatry, murder and adultery were accounted mortal, in the sense that they altogether severed the soul from God (244). In subsequent times all those actions or habits of mind which tended to do so, including the entire offspring of the seven deadly sins (245) were called mortal, because

Gratian, Caus. XXXIII. Qu. III. Dist. I. c. 84 : When such a crime has been committed that he who has committed it is separated from the body of Christ. *Id. Ibid.* Dist. VII. c. 6 : Some sins there be which are sins unto death (mortalia), and in penance they become a source of life (vitalia). *Id. Ibid.* Dist. I. c. 8, calls them mortifera. *Ibid.* I. Dist. XXV. c. 3, capitalia, also Caus. XXII. Qu. I. c. 17 ; Prosper, *Ibid.* Dist. IV. c. 14 : He who recedes from Christ and ends his life alien from grace, how can he escape falling into perdition ? Cnut's Law 23, A.D. 1017. Const. 2, Edmund A.D. 1236, forbids a priest to execute the duties of his office whilst labouring under mortal sin. 13 Ed. I. St. IV. c. 1, A.D. 1285, mentions mortal sin. Const. 5, 8 and 9, Reynolds, A.D. 1322 ; Lynd. 60, 236, 334.

(242). Tertullian adv. Marcian IV. 9, enumerates 7 deadly sins, viz.: idolatry, blasphemy, murder, adultery, fornication, false witness, fraud. Isidor. ap. Gratian, Caus. XXXII. Qu. VII. c. 15, mentions septem vitia. Const. 9, Peckham, A.D. 1281. Lynd. 328.

(243). Gal. v. 19-21, enumerates 17, adding καὶ τὰ ὅμοια. Augustin, ap. Gratian I. Dist. XXV. Pars. III, enumerates 12, viz.: sacrilege, murder, adultery, fornication, false-witness, theft, robbery, pride, hatred, avarice, and, if persisted in, anger and drunkenness. Cap. 31, Theodulf, A.D. 994, says there are 8 capital sins, viz. : gluttony, unlawful copulation, worldly grief, covetousness, vain glory, envy, anger, pride.

(244). Tertullian De Pudic. c. 5.

(245). Concil. Brac. II. A.D. 572, Can. 1, ap. Gratian, Caus. X. Qu. I. c. 12 ; Const. 9, Peckham, A.D. 1281 : (1) Pride is a love of one's own excellency from whence spring boasting, ostentation, hypocrisy, schism and the like ; (2) envy is the hatred of another's felicity from whence comes detractation, murmuring, dissension, perverse judgment and the like ; (3) anger is a desire of revenge and of hurt to another, which when it rests in the heart produces hatred, persecution in word and deed, blows, slaughter and the like ; (4) indifference [or carnal security, accidia] is a loathing of spiritual good, insomuch that a man delights not in God nor in divine praises, and

if indulged in they bring about a relation of enmity to God. Venial sins (246) and all shortcomings of omission or commission, which spring from natural inadvertence and to which the will does not consent, are forgiven in the daily prayer for forgiveness prescribed for the use of all who are in a state of grace (247).

31. The laws of the Church as laid down in the provincial constitutions of this country require all included in the Christian society to cultivate the three so-called theological virtues, viz. faith, hope and charity (248), and as a necessary means thereto to know the Creed and the Lord's Prayer (249); to pursue the four cardinal virtues (250), viz. prudence, justice, temperance

it is attended with laziness, cowardice, despair and the like; (5) covetousness is an immoderate love of plenty, whether in moveables or immoveables, and that either in getting or keeping them, from whence comes fraud, theft, sacrilege, simony and all filthy lucre; (6) gluttony is an immoderate love of the pleasures of taste in eating or drinking, and there are 5 ways of sinning in it, viz.: unseasonably, daintily, excessively, eagerly, and premeditatively .... (7) luxury needs no explanation whereof the stench infests the common air. Lynd. 60, 61, 282, 334, 174. Const. 9, Reynolds, A.D. 1322.

(246). Cyprian De Orat. Dom. 12: We have need of daily sanctification that we who daily fall away may wash out our sins by continual sanctification. And what the sanctification is the Apostle declares 1 Cor. VI. 9. Augustin ap. Gratian I, Dist. XXV. Pars. III. *Id.* Caus. XXXII. Qu. II. c. 3, calls immoderate license of the married a venial sin. Ambros. *Ibid.* Caus. XXXIII. Qu. III. Dist. III. c. 2: We ought always to bewail past sins, *i.e.* lesser shortcomings. Gregory Dial. *Ibid.* I. Dist. XXV. c. 4; Lynd. 226, says that omitting a psalm in service is venial. *Ibid.* 342.

(247). Augustin ap. Gratian I. Dist. VI. c. 1: Among the Jews venial sins were always remitted by ceremonies. *Id. Ibid.* I. Dist. XXV. c. 3 and Caus. XXXIII. Qu. III. Dist. III. c. 20: As to daily lighter and lesser shortcomings, without which this life cannot be led, the daily prayer of the faithful makes satisfaction. Lynd. 237.

(248). Concil. Clovesho. A.D. 747, Can. 20; Const. 9, Peckham, A.D. 1281; Lynd. 63.

(249). Can. 23 Elfric, A.D. 957; Edgar's Law 22, A.D. 960; Cap. 22 Theodulf, A.D. 994; Cnut's Law 22, A.D. 1017.

(250). Egbert's Dial. 16, A.D. 734; Concil. Ensham, A.D. 1009, Init. Const. 9 Peckham, A.D. 1281. Lynd. 63.

and fortitude (251); to exercise forgiveness and compassion by practising the seven spiritual and the seven corporal works of mercy (252); every Sunday and high day to join with the faithful in the solemn Eucharistic worship (253); to pray for themselves at least twice a day (254), and as often to confess their

(251). Origen De Prin. II. 5, 3, mentions justice, prudence, sobriety and all the other virtues. Alfred's Law, 1, A.D. 877; Cap. 21 and 35 Theodulf, A.D. 994; Const. 9 Peckham, A.D. 1281, requires the 10 commandments of the decalogue, the 2 precepts of the Gospel or of love to God and man, the 7 works of mercy, avoidance of the 7 capital sins with their progeny, the practice of the 7 principal virtues and the 7 sacraments of grace. As to the division of the decalogue see Lynd. 54, 55.

(252). Const. 9, Peckham, A.D. 1281: Six corporal works of mercy are manifest from St. Matthew's Gospel, viz.: to feed the hungry, to give drink to the thirsty, to entertain strangers, to clothe the naked, to visit the sick, to comfort the prisoner. The 7th is inferred from Tobit, which is to bury the bodies of the dead. Lynd. 60 enumerates the 7 spiritual works of mercy as teaching the ignorant and advising the doubting. (Gratian I. Dist. XLV. c. 9, and XLIII. c. 1), rebuking the erring (1 Dist. XLV. 15), forgiving injuries (Gratian I. Dist. L. c. 53), comforting the distressed (Caus. III. Qu. IX. c. 14), showing compassion (1 Dist. XLV. c. 15), praying for all (I. Dist. XXXVI. c. 3). They are commemorated in the line Consule, castiga, remitte, solare, fer, ora. Cap. 21, Theodulf, A.D. 994.

(253). Const. Islep, A.D. 1359, says at their parish church. Lynd. 54.

(254). Apost. Const. VII. 47, prescribes for morning prayer: Glory be to God in the highest and upon earth peace among men of goodwill. We praise Thee, we hymn Thee, we bless Thee, we glorify Thee by Thy great high Priest—Thee Who art the true God, Who art the One Unbegotten, the only inaccessible Being—for Thy great glory O Lord and heavenly King, O God the Father Almighty, O Lord God, the Father of Christ the immaculate Lamb Who taketh away the sin of the world, receive our prayer, Thou that sittest upon the Cherubim. For Thou only art holy, Thou only art the Lord Jesus, the Christ of the God of all created nature and our King, by Whom glory, honour and worship be to Thee. *Id.* 48 prescribes for evening use: Ye children praise the Lord, praise the name of the Lord. We praise Thee, we hymn Thee, we bless Thee for Thy great glory, O Lord our King, the Father of Christ, the immaculate Lamb, Who taketh away the sin of the world. Praise becomes Thee, hymns become Thee, glory becomes Thee, the God and Father through the Son in the most holy Spirit, for ever and ever, Amen. Now O Lord lettest Thou, &c. Conf. Polycarp's dying prayer in Euseb. IV. 15, Can. 23 Elfric, A.D. 957, Cap. 29 Theodulf, A.D. 994: Also ye shall admonish your

sins (255); to assist at the processional litanies (256) on Wednesdays and Fridays (257), and also on Sundays and festivals(258), to submit themselves once a year for examination as to the fulfilment of these obligations (259), and to communicate at least thrice a year (260).

32. They also require them to honour and support those who

parishioners that they apply themselves to prayer. In this manner ye shall teach them to pray. First they shall sing Credo, since it is most proper that they shew the firmness of their right faith. And after he hath sung Credo let him say thrice: God, Thou art my Creator, have mercy on me, and thrice: God be merciful to me a sinner. After that let him sing Pater Noster, and after that, if he have place and leisure, let him first pray to St. Mary and the Holy Apostles and Martyrs, and all God's saints, that they would intercede for him to God; and then, arming his forehead with the holy Rood token let him, with uplifted hands and eyes, give thanks to God for all that He has given him, both prosperity and adversity. If he have not leisure for the doing of it all in this manner, then let him say simply: God, Thou art my Creator, have mercy on me, and thrice, God be merciful to me a sinner, and then, with inward heart, let him say Pater Noster and sign himself.

(255). Cap. 30 Theodulf, A.D. 994.

(256). Can. 2 Athelstan, A.D. 1014, orders Litanies against the Danes. Litanies are said to have been first introduced in the West, A.D. 461, by Mamertus of Vienne (Gregor. Turon. Hist. II. 34, Palmer I. 270), probably in imitation of the Eastern Church. Gregory, A.D. 590, introduced the Litania Septena or Litania Majoꝛ on 25 April, said by 7 groups of clergy, men, monks, virgins, married women, widows and children, each starting from a separate church and meeting at a principal church, which Concil. Clovesho. A.D. 747, Can. 11, adopted for this country. Alfred's Law 5, A.D. 877; Athelstan's Law 1, A.D. 926; Const. 35 Othobon, A.D. 1268.

(257). Const. Islep, A.D. 1359, prescribes two customary processions about Churches and Churchyards every week, for the peace of the Kingdom.

(258). Const. Bourchier, A.D. 1454, after the capture of Constantinople orders "that men celebrate processions on the Lord's day and festivals, and sing or say the Litanies with other suffrages as well as on Lord's days and festivals as on every Wednesday and Friday."

(259). Concil. Lat. IV. A.D. 1215, Can. 6 in Decret. Lib. V. Tit. XXXVIII. c. 12; Const. 3, Sudbury A.D. 1378.

(260). Const. 4, Sudbury A.D. 1378.

bear rule over them (261), the bishop as the high priest of God who stands to them in the place of Christ (262), the presbyters as those who watch for their souls (263), consecrated virgins and widows as the Church's altar of incense (264); to show outward respect for God by reverencing the sacred name (265), commemorating founders and builders of Churches (266), and not despising

(261). 1 Cor. IX. 14: The Lord hath ordered that they who preach the Gospel should live of the Gospel. Apost. Const. II. 25: Those who attend upon the Church ought to be maintained by the Church as being priests, Levites, presidents and ministers of God . . . Those which were then first-fruits and tithes and offerings and gifts, now are oblations which are presented by holy bishops to the Lord God thro' Jesus Christ, Who died for them. For these are your high-priests, as the presbyters are your priests and your deacons instead of Levites; as are also your readers, your singers, your door-keepers, your deaconesses, your widows, your virgins and your orphans. But He Who is above all these is the High Priest . . . As yours is the burden, so you receive as your fruit the supply of food and other necessaries. Innocent III. in Decret. Lib. III. Tit. v. c. 16; Concil. Lat. IV. Can. 32 *Ibid.* Lib. III. Tit. v. c. 30.

(262). Apost. Const. II. 20 and 26: Let the bishop preside over you as one honoured with the authority of God, which he is to exercise over clergy, and by which he is to govern all the people. Ambros. ap. Gratian, Caus. XXXIII. Qu. v. c. 19: A woman ought to appear veiled as well before a bishop as a judge, because a bishop is the Lord's vicar.

(263). Heb. XIII. 17.

(264). Apost. Const. II. 26.

(265). Concil. Lugdun. II. A.D. 1274, in Sext. Lib. III. Tit. XXIII. c. 2: Whilst the sacred offices are being celebrated, whenever the glorious name of Jesus Christ is mentioned, let all bend the knees of their hearts, and attest the same by bowing the head. Concil. Vien. A.D. 1311, in Clem. Lib. III. Tit. XIV. c. 2; Lynd. 112, 184.

(266). This is the reason for the feast of the title. Concil. Clovesho, A.D. 747, Can. 17: That the birthday of the blessed pope Gregory and also the day of the deposition of St. Augustine, the archbishop and confessor, who being sent to the nation of the English by the said pope, our father Gregory, first brought the knowledge of faith, the sacrament of baptism, and the knowledge of the heavenly country . . . be honourably observed by all. Clement III. A.D. 1188, in Decret. Lib. III. Tit. XXXVIII. c. 25, secures to patrons the honor processionis or right to walk among the clergy. Concil. Tolet. IV. A.D. 633, Can. 37, ap. Gratian, Caus. XVI. Qu. VII. c. 30, and Leo IV. A.D. 850, *Ibid.* c. 29, secure to them support from the church in case of their falling into poverty. See Concil. Lat. IV. A.D. 1215, Can. 32, in Decret. Lib. III. Tit. v, c. 30.

offerings for the dead (267), kneeling (268), bowing (269), the use of incense (270), devotional lights (271) and the kiss of peace (272); and to give alms of their goods to their poorer brethren, as those who share with themselves the grace of life and are equally representatives of the person of Christ (273).

33. The obligation to keep God's commandments places on a higher platform the otherwise civil relations of (1) husband and wife, (2) master and man, (3) sovereign and people. The married relation is invested with a sacramental character. In the relation of master and man and on a larger scale in that of employer and employed, personal rights which are of human creation (274) are tempered by regard for the well-being of others, which is a divine injunction (275). The relation of sovereign and people

(267). Concil. Gangra, A.D. 355, ap. Gratian I. Dist. XXX. c. 9; Const. 8, Arundel, A.D. 1408.

(268). Kneeling was allowed on station days, Wednesdays and Fridays. Tertullian de Orat. c. 23: At fasts and stations no prayer should be made without kneeling; for then we are not only praying but deprecating wrath. On Sundays and from Easter to Pentecost kneeling is forbidden (except to penitents) by Concil. Nic. A.D. 325, Can. 20, ap. Gratian III. Dist. III. c. 10, Conf. 1 Dist. XXVI. c. 7 and Caus. VI. Qu. VII. c. 6.

(269). Const. 8, Arundel, A.D. 1408; Lynd. 298.

(270). Theodori Poenit. II. 1, 9, in Haddan & Stubbs, III. 191: Let the Lord's incense be burnt on the natal day of the saints out of respect for the day. Edgar's Law 43, A.D. 960, Lynd. 298.

(271). Theodori Poenit. II. 1, 8, *Ibid.* p. 197. Law 6 Alfred & Guthrum, A.D. 878; Concil. Ensham, A.D. 1009, Can. 12 and 13; Cnut's Law 12, A.D. 1017, require payment of light shot. Const. 8, Arundel, A.D. 1408; Lynd. 298.

(272). Const. 8, Arundel, A.D. 1408.

(273). Luke XIV. 13; XVIII. 22; Rom. XV. 26; 1 Cor. XIII. 3; Gal. II. 10; James III. 5; Ambros. ap. Gratian I. Dist. LXXXVI. c. 14; Cap. 34 Theodulf, A.D. 994: It is the duty of every man to give alms to them that are in want, yet more on the days on which we fast than on other days, Lynd. 209.

(274). Διδαχή I. 5. Augustin, ap. Gratian I, Dist. VIII. c. 1: By divine law the earth is the Lord's and the fulness thereof . . . By human law this is mine, that is thine. Clem. Recog. X. 5, and Pseudo-Isidor. *Ibid.* Caus. XII. Qu. I. c. 2: The use of all things which are in the world ought to be common to all men, but by means of iniquity one calls this his, another calls that.

(275). 1 Cor. X. 24, XIII. 5; Phil. II. 4. Theodori Poenit. II. IV. 1, A.D.

becomes an expression of God's government of the world, and thus human laws become God's commands.

34. The slave is not set free forthwith when such action would inflict injury on others (276), but the Christian slave is taught not to despise his master (277). Neither offenders (278) nor yet others of their own free will or in cases of necessity (279) are forbidden to be reduced to slavery, but Christian masters are bidden not to oppress their slaves (280), to regard them as brethren (281) and the Lord's freemen (282), to afford them

673, in Haddan & Stubbs III. 193 : In baptism sins are released, but not the conjugal tie with a wife, since sons born before baptism, as well as those born after baptism, are equally the sons of the baptized.

(276). Gregory, in Decret. Lib. IV. Tit. V. c. 2, requires a slave who has been emancipated on condition that he would join a monastery, to do so or otherwise to return to slavery. See note 288.

(277). Eph. VI. 5, 1 Tim. VI. 1 ; Concil. Gangra, A.D. 355, Can. 3, ap. Gratian, Caus. XVII. Qu. IV. c. 37 : If any one teaches the slave of another to despise his master because of religion, and not rather to serve him with all honour, let him be anathema. Apost. Const. IV. 12 and VIII. 32.

(278). Concil. Tolet. II. A.D. 531, Can. 3 mentions women-slaves, and requires a priest to hand over such to the charge of his mother or sister. Concil. Hispal. 1, A.D. 590, Can. 3 allows bishops to claim such slaves to their own use if the above rule were disobeyed. Theodori Pœnit. II. II. 5, A.D. 673, in Haddan & Stubbs III. 191 : A bishop or an abbot may have a man convicted of crime as a slave if he have no means of redeeming himself. Concil. London, A.D. 1108, Can. 10 : The bishop shall have their adulterous concubines [as slaves].

(279). Concil. Gall. A.D. 616, Can. 14 : Freemen who have sold themselves may be redeemed for the same sum so soon as the money can be got together. Theodori Poenit. II. XIII. 1, l. c. p. 202 : A father compelled by necessity may sell his boy as a slave before he is 7 years old, afterwards he may not do so without his consent.

(280). Concil. Tolet. III. A.D. 589, Can. 21, ap. Gratian, Caus. XII. Qu. II. c. 69 and 39.

(281). Elfric's Hom. I. 261 : Christian men are brothers, whether high or low, noble or ignoble, lord or slave. The wealthy is not better on that account than the needy. As boldly may the slave call God his father as the king. We are all alike before God, unless any one excel another in good works.

(282). Col. IV. 1 ; 1 Cor. VII. 22 ; Eph. VI. 9.

opportunities for the discharge of their religious duties (283), to respect their persons (284) and their marriages (285), ever remembering that "to exercise pressure for the sake of gain and to seek to make a profit out of the needs of others is contrary to all law, human and divine" (286). At the same time the emancipation of slaves is encouraged (287), proper compensation being made for loss occasioned thereby (288). Formerly in this country all native-born Englishmen who had been awarded as slaves

(283). Alfred's Law 20, A.D. 877.

(284). Alfred's Law 13, A.D. 877, punishes violence done to a woman-slave.

(285). Concil. Cabilon. II. Can. 30, A.D. 813, ap. Gratian Caus. XXIX. Qu. II. c. 8 : We decree that the marriages of slaves be not dissolved, though they belong to different lords.

(286). Leo XIII's Encyclical, 1891, p. 13, 14.

(287). Concil. Aurel. IV. A.D. 541, Can. 30, requires the slaves of Jews who take refuge in churches to be bought free by raising a subscription and paying a reasonable price for them. Concil. Tolet. IV. A.D. 633, ap. Gratian, Caus. XII. Qu. II. c. 5 ; Concil. Matiscon 1. A.D. 581, Can. 16 ; Athelstan's Law I, A.D. 925 : That ye set at liberty some one that for his crimes has been condemned to slavery for the mercies of Christ. Slaves were formerly emancipated in three ways : (1) by placing a penny in the slave's hand, which the prince struck out of it. See Devoti Inst. Lib. 1, Tit. 1, § 1. This was civil enfranchisement. Such freedmen were called denariales liberti or penny freedmen. (2) By giving the slave freedom at the altar. Concil. Carthag. V. A.D. 401, Can. 8, in Codex Eccles. Afr. 64 : Respecting the celebration of manumissions in churches, if our brother bishops in Italy are found to practise it, it will be our aim to follow faithfully their procedure (ordinem). Wihtraed's Doom, A.D. 696 : If a man give freedom to a slave at the altar. Instances at the altar of St. Petrock in Haddan & Stubbs, I. 676, in Exeter Cathedral, *Ibid.* I. 688, and Leofric's Missal LVIII. (3) The third mode of manumission was by will or instrument (per chartulam or per brevem). Such were called chartularii or tabularii. Concil. Araus. A.D. 441, Can. 7, mentions those set free in Church or by will. Concil. Hispal. I. A.D. 590, Can. 1, those set free by a bishop's will. Concil. Tolet. VI. A.D. 638, Can. 9, requires those emancipated by a bishop to produce their certificates before his successor. Concil. Tolet. IX. A.D. 655, Can. 11, dates their freedom from the bishop's death. Theodori Poenit. I. VII. 5, A.D. 673, in Haddan & Stubbs, III. 183 : Of those set free (de egressis) Theodore held the value of a man or woman to be equivalent to a year [of penance].

(288). Concil. Hispal. I. A.D. 590, Can. 1, allows a bishop's grants of emancipation to stand if he has left his property to the Church, but Concil.

to a bishop for some crime were required to be set free on his death; and every bishop and abbot in the province was on every such event required, at his own expense, to emancipate three of his own slaves and to provide them with an outfit (289). Freed slaves were, moreover, taken under the Church's protection (290), and runaway slaves not allowed to be given up to their masters until the latter had given security not to take their lives (291).

35. Since the powers that be are God's ministers (292)

Tolet. IV. A.D. 633, Can. 66, ap. Gratian, Caus. XII. Qu. II. c. 29, and Decret. Lib. III. Tit. XIII. c. 4: Let not bishops who have made no compensation to the Church of Christ out of their own property . . . . presume to set free slaves belonging to the estate of the Church. Concil. Emerit. A.D. 666, Can. 20, 21; Synod. VIII. A.D. 869, ap. Gratian I.; Dist. LIV. c. 22; Egbert's Excerpt. 70, A.D. 740.

(289). Concil. Chelsea, A.D. 816, Can. 2: When any bishop passes out of this world let . . . . . every Englishman [not therefore Britons] who has been made a slave to him in his days be set at liberty . . . . Afterwards let every prelate and abbot . . . . set at liberty 3 slaves and give 3 shillings to every one of them. Archbishop Elfric in his will, A.D. 1006, in Hist. Monast. de Abbendon, I. 417, 419, freed all who during his episcopate had lost their liberty.

(290). Concil. Araus. A.D. 441, Can. 7, ap. Gratian I. Dist. LXXXVII. c. 6. If any one should attempt to reduce to slavery those set free in Church or by will, let him be restrained by ecclesiastical animadversion. Concil. Aurel. V. A.D. 549, Can. 7, forbids those "who have been emancipated from serfdom by a patriotic custom in Church" to be again reduced to slavery. Concil. Matiscon II. A.D. 585, Can. 7; Concil. Agath. A.D. 506, Can. 29, *Ibid.* c. 7.

(291). Concil. Aurel. I. A.D. 511, Can. 3, ap. Gratian, Caus. XVII. Qu. IV. c. 36.

(292). Iren. IV. 8, 3: Every righteous King possesses a priestly order. Tertullian ad Scapulam, c. 2: To the emperor we render such reverential homage as is lawful for us and good for him, regarding him as the human being next to God, who from God has received all power and is only less than God. Augustin De Verit. Praed.: An emperor is not so much a vessel of mercy prepared in glory because he has reached the summit of earthly rule; as if he lives by right faith in the imperial estate . . . . if before all things he remembers that he is a son of holy mother the catholic Church, and causes his rule throughout the world to advance the peace and tranquillity of the Church.

set to administer divine justice upon earth (293), prayers are directed to be made for them in the Eucharist (294) and other public offices (295). Christian kings are, moreover, made the recipients of a special anointing (296), whereby the seal of ecclesiastical order is publicly impressed upon them (297), and they are allowed to convene and preside in councils (298). The Western emperor was formerly admitted a canon of the Lateran; to the

(293). Rom. XIII. 1-7. Iren. Haer. IV. 36, 6; v. 24, 2.

(294). Apost. Const. VIII. 12: gives the following order of intercessions after the consecration (1) for the whole Church, (2) the bishop and clergy, (3) the king and all in authority, (4) the saints of old, (5) the people present, (6) the whole place and the sick, (7) persecutors, (8) catechumens and penitents. 1 Tim. II. 2. In Socrates II. 37, the bishops at Rimini, A.D. 359, write to Constantius asking him to dismiss them "that we may be enabled in conjunction with the people to offer up our solemn prayers to Almighty God and our Lord and Saviour Jesus Christ for the prosperity of your reign as we have always done and now desire to do."

(295). Concil. Clovesho, A.D. 747, Can. 30: That ecclesiastics and monks in their canonical hours entreat the divine clemency not only for themselves but for kings, dukes and the safety of all Christian people. Elfric's Can. 20, A.D. 957; Edgar's Law, 67, A.D. 960: That every priest know to make answer when he fetches the chrism as to what he has done in relation to the prayers for the king and the bishop.

(296). Fulbert of Chartres ap. Gratian Caus. XXII. Qu. v. c. 19; Egbert's Pontif. p. 101; 33, Ed. III. Aide de Roy, 103, declares it a maxim of English law, Reges sancto oleo uncti sunt spiritualis jurisdictionis capaces. Maskell's Mon. Rit. II. p. 23. Wordsworth's Coronation of Charles I, p. XX.

(297). Gildas 82, A.D. 570, relates that the kings who reigned in Britain were accustomed to receive the royal unction. Cumineus Vit. Columbae, p. 30. Saxon Chronicle, A.D. 785, says: Egferth was hallowed to be king. Turner III. 172, gives the form used at the coronation of Ethelred in 978 A.D. Lingard II. 368, believes that the Franks adopted the practice of anointing from the Northumbrians. It was used in 751 A.D. when Boniface crowned the mayor of the palace in place of Childeric, and also when Charles was crowned at Rome, A.D. 800. Concil. Chelsea, A.D. 787, Can. 12: That in ordaining kings none permit the votes of wicked men to prevail, but let kings be lawfully chosen . . . He who is not born in lawful wedlock cannot be the Lord's anointed King of the whole Kingdom. Innocent III. A.D. 1204, to the Duke of Carinthia in Decret. Lib. I. Tit. VI. c. 34, and Tit. XV. § 6.

(298). Leofric Missal, 249, provides a prayer for the king in synod.

Eastern emperor a place was allotted within the sanctuary (299). The English sovereign is constituted a prebendary of St. David's and besides the sword of temporal justice receives also at his coronation the sword of spiritual justice and the blunted sword of mercy. In this country, in consequence, as well as in France and Spain, certain powers of dispensation are recognised as belonging to the sovereign (300).

(299). Teaching of the Apostles, Can. 25 : That those kings who shall hereafter believe in Christ shall be permitted to go up and stand before the altar with the Guides [*i.e.* bishops] of the Church, because David also went up and stood before the altar. Syn. Trull. A.D. 692, Can. 69.

(300). Concil. Barcin. II. A.D. 599, Can. 3, speaks of laymen being made bishops contrary to the canons, per sacra regalia, or by the will of the people. Concil. Tolet. V. A.D. 636, Can. 8 : In all the aforesaid matters we reserve the power of indulgence in the faults of delinquents to the prince. Alfred's Law, 6, A.D. 877 : If a man take a nun out of a monastery without the leave of the king or the bishop.

# III.

# THE EUCHARIST.

## The Eucharist as a Sacramental Oblation.

1. The most noble sacrament of all is the Holy Eucharist (1) or thanksgiving sacrament of the Gospel, in which, by means of visible signs, the faithful offer themselves to God as a united body (2), a pure offering (3), the mystical Body of Christ, in order to participate as such in the heavenly offering continually being pleaded by the great High Priest before His Father (4). It is variously called the sacrament of the altar (5), the communion of the Body and Blood of Christ (6), the offering or oblation (*προσφορά*) (7), the commemoration (8), the sacri-

(1). Ign. ad Phil. c. 4 ; Justin I. Apol. c. 67. Origen contra Cels. VIII. 67 : The bread which is called the Eucharist is a sacramental sign of our thanksgiving to God. Bona Rer. Lit. Lib. I. : The Eucharist is the representation of that offering wherein Christ offered Himself to the Father.

(2). Rom. XII. 1 ; Augustin. Serm. 271. See below notes 45 and 17. Freeman's Principles of Divine Service, I. 175, 209 ; II. 176, 190, 439.

(3). Iren. IV. 18, 1 : The oblation of the Church is accounted with God a pure sacrifice. *Ibid.* IV. 18, 4 : The Church alone offers this pure oblation ; *Ibid.* V. 9, 2.

(4). Heb. VII. 25. Hieronym. ap. Gratian III. Dist. II. c. 89 : The Priest of God the Father is the Son of God, not according to His divine but according to His human nature, in which He offered Himself for us by means of His passion and death an acceptable Sacrifice to God, that He might be at once both Priest and Sacrifice.

(5.) Augustin De Civ. Dei, X. 6 ; 1 Ed. VI. c. 1. Bona Lib. I. c. 3 § 1.

(6). 1 Cor. X. 16 ; Concil. Elib. A.D. 305, Can. 3: Placuit eis non ulterius dandam esse communionem.

(7). Iren. Haer. IV. 17, 5 : Christ taught the new oblation of the new covenant which the Church receiving from the apostles offers to God throughout the world. It is termed *προσφορά* by Concil. Nic. A.D. 325, Can. 18 ; Apost. Const. VIII. 13 ; Ambros. ap. Gratian III. Dist. II. c. 53 ; Augustin, *Ibid.* c. 26 ; Concil. Brac. III. A.D. 675, *Ibid.* c. 7 ; Cap. 5 Theodulf, A.D. 994.

(8). Paschasius ap. Gratian III. Dist. II. c. 71.

fice (9), in common parlance the housel (10), and, using the most comprehensive term, the Lord's Supper (11); but the term Lord's Supper properly includes not only the Eucharist but also the agape or common meal, which in former times accompanied it (12) and is now represented by the benediction bread and wine or antidoron (13). In the Eucharist itself there are two parts: (1) the sacramental oblation or representative commemoration before God of Christ's sufferings in accomplishing the work of man's deliverance (14); and (2) the

(9). Augustin. De Civ. Dei, x. 6: Sacrifice is anything which is done in order to unite us to God in holy fellowship. Origen cont. Celsum, i. 21, speaks of "offering up continually bloodless sacrifices with prayer to God." Cyprian, Ep. 62 (Oxf. 63), 1: Christ is the Founder and Teacher of this Sacrifice. Chrysostom. Hom. in S. Eustach.: There is also an unbloody Sacrifice . . . seeing that the sacrifice of Isaac was completed without blood. Cyril ap. Gratian III. Dist. II. c. 80, calls it an unbloody service of sacrifice. Apost. Const. II. 57; Pseudo-Gregory, *Ibid.* Can. I. Qu. I. c. 84; Theodori Poenit. I. XII. in H. & S. III. 186; Const. 1 Peckham, A.D. 1281. Liebermann, Inst. Theol. VI. 385, observes that he who gives, not he who consecrates, makes the sacrifice.

(10). Hunsl is used in Ulfilas' Gothic Testament to express (1) θυσία or sacrificial victim in Matth. IX. 13; Mark IX. 49; Luke II. 24; 1 Cor. X. 18; (2) προσφορά or offering in Eph. V. 2; (3) λατρεία or service in John XVI. 2.

(11). 1 Cor. X. 21, 22. Bona I. 3 gives as other names, Synaxis or Collecta, Liturgia, Mystagogia, Telete, Anaphora, Œconomia, Agenda, Dominicum. Freeman II. 438, observes that whatever foreign reformers may have used the Lord's Supper to express, by English reformers it was used to express the sacrificial oblation distinct from communion.

(12). In the Roman Empire the Christians are said to have discontinued the agape after Trajan's rescript to Pliny X. 97, in A.D. 112. See Lightfoot; and Ramsay Church in the Roman Empire, p. 206, 219, 358.

(13). Ignat. ad Smyrn. c. 8: Without the bishop it is not lawful to baptize or to celebrate the agape. Cyprian Ep. 62, 16 ad Caecilium: Numquid Dominicum post cœnam celebrare debemus? Concil. Carthag. III. A.D. 397, Can. 29.

(14). Justin Trypho, 41: Our Lord Jesus Christ prescribed the celebration of the Eucharist in remembrance of the suffering which He endured on behalf of those who are purified in soul from all iniquity, in order that we may at the same time thank God for having created the world . . . and for delivering us from the evil [plight] in which we were, and for utterly overthrowing principalities and powers.

sacrificial communion or means of increasing the divine life by worthily partaking of the same (15).

2. The essentials of the Eucharist are bread and wine as the remote matter, the offering of them as the proximate matter, and the prayer that the offering may be accepted in Heaven in accordance with Christ's institution as the form (16). The materials which are thus honoured should be properly prepared, the bread from flour and water to represent the offerers united among themselves (17), the wine a mixture of wine and water to

(15). Prosper ap. Gratian III. Dist. II. c. 37; Leo *Ibid.* c. 38.

(16). Justin 1 Apol. c. 66, A.D. 140, speaks of the food which is blessed in the Eucharist (ἡ εὐχαριστηθεῖσα τροφή) by the prayer of the word delivered by Him (λόγου τοῦ παρ αὐτοῦ). Origen contra Celsum, VIII. 33: We give thanks to the Creator of all and eat the loaves which are presented with thanksgiving and prayer; which have become by prayer a Holy Body sanctifying those who partake thereof with sincerity. It has been usual since the 13th century to say that the form is the recital of Christ's words of institution; and Synod. Exon. A.D. 1287, in Wilkins II. 132, states that Hoc est enim Corpus Meum and Hic est Calix, etc. are the effective words after which the elements are no longer Bread and Wine. Yet it is admitted that these words are not effective unless used with intention, which presupposes the antecedent and subsequent prayer. Moreover, the Liturgy of Addai and Mari does not contain the words of institution (Duchêsne 172), but has only the commemoration of Christ's life upon earth and an invocation of the Holy Spirit to hallow the elements. It therefore appears that the prayer is the consecrating form and that the words This is My Body &c. merely determine the moment when the prayer takes effect.

(17). Cyprian Ep. 62, 13: The body of the Lord cannot be flour alone or water alone, but both must be united and joined together; in which visible representation (sacramento) our people are shown to be a united body. Διδαχή IX. 4: As this broken bread was scattered upon the mountains and gathered together became one, so let Thy Church be gathered together from the ends of the earth. Cyprian Ep. 75 (Oxf. 69), 6. Augustin. Serm. 229: After that you came to the water and were moistened and made into one. The heat of the Holy Ghost was added and you were baked and became the Lord's bread. Amalarius De Eccl. Offic. III. 19: The offering is not meal without water . . . It represents a united people. Walafrid Strabo A.D. 849, c. 16: Nothing is more suited than bread and wine to signify the unity of the Head and members, because as the bread is made from many grains and reduced to one body by the glue of water, so the body of Christ is made up of the united multitude of the saints. Honorius of Autun, A.D. 1111, Gemma Animae I. 66: Formerly presbyters used to

represent the people united to Christ (18); the flour pure wheaten flour (19). The bread should be either leavened or unleavened (20),

receive meal from every house or family (which custom the Greeks still observe) and made from it the Lord's Bread which they offered for the people and distributed to them when consecrated. See note 45.

(18). Justin Martyr, 1 Apol. 67: Bread and a mixed cup (κρᾶμα) are brought to the president. Iren. IV. 33, 2: Christ affirmed the mixed cup to be His blood; V. 1, 3: The Ebionites reject the mixed cup of the heavenly wine; V. 36, 3: The Lord promised that He would have the mixed cup new with His disciples. Cyprian Ep. 62 (Oxf. 63), 9 ad Cæcilium A.D. 254, ap. Gratian III. Dist. II. c. 2: The cup which is offered should be a mixed cup, c. 13: In the water is understood the people, but in the wine is shewed the blood of Christ. Clem. Alex. Paedag. II. c. 2, gives another meaning. Concil. Carthag. III. Can. 24, *Ibid.* c. 5; Concil. Martini, A.D. 572, Can. 55, *Ibid.* c. 4; Concil. Aurel. IV. A.D. 541, Can. 4: the fruit of the vine mixed with water. Concil. Autissiodor. A.D. 578, Can. 8; Elfric's Can. 37, A.D. 957: Let him always mingle water with the wine, for the wine betokeneth our redemption thro' Christ's blood and the water betokeneth the people for whom He suffered." The same reason for mixing is given by Ambros. ap. Gratian III. Dist. II. c. 83, and by Concil. Brac. III. A.D. 675, *Ibid.* c. 7. Edgar's Law 39, A.D. 960; Concil. Winton, A.D. 1071, Can. 6; Concil. Ebor. A.D. 1195, Can. I. Devoti Inst. Lib. II. Tit. II. § 45, states that mixing is not essential, altho' it has ever been practised in both East and West. The 9th century Ordo ap. Duchêsne, p. 445, requires the mixing to be solemnly done by the deacon. In the Eastern Church it is solemnly done at a previous service. In private masses in the West the mixing took place beforehand, or at any time before the Gospel, and the usual time was during the Gradual. The modern Roman rule requires the mixing to be done by a priest and forbids it to be done by an assistant. Craisson § 3685.

(19). Baeda, II. 6, relates that Saba's sons asked bishop Mellitus of London to give them the fine white bread (nitidum panem) which he gave to their father Saba. Concil. Tolet. XVI. A.D. 694, Can. 6, censures priests for using any bread that comes to hand, and not bread specially baked for the purpose.

(20). The Eastern Church always consecrated leavened bread. According to Mabillon unleavened bread was always used in the West. Cochleus Revision of Isidore's Mozarabic Rite c. 16, De Symbolo mentions unleavened bread. Bona Rer. Lit. Lib. I. c. 23, and Sirmond hold that up to the year 867 A.D. leavened and unleavened bread were used indiscriminately but that unleavened bread became the rule by 1054 A.D. Devoti Inst. Lib. II. Tit. II. § 44, Chambers Divine Worship, p. 236. Alcuin Op. I. 107, Ep. 75, prescribes unleavened bread. Anselm Op. I. 200 gives as the reason that it ought to be free from the leaven of malice and wickedness. Concil.

baked with care (21), and consisting of whole (22) circular (23) loaves; the wine the pure juice of the grape (24), properly made and not freshly squeezed (25), nor yet acid (26), and the added water should not be so much as to drown the

Floren. A.D. 1439, directed each branch of the Church to follow its own custom.

(21). Concil. Tolet. XVI. Can. 6; Can. 5, Theodulf A.D. 994: That the oblation be either baked by yourself or by your servant in your presence." The breads in baking were pressed between two irons called a bult, ferroni or ferramentum or singing-irons because psalms were sung whilst they were being used. Gilbert, bishop of Limerick, A.D. 1100, requires every priest to have his box of altar-breads and baking-irons. William of Bleys, A.D. 1229, in Wilkins I. 623 enjoins the ministers of the Church wearing surplices to make the altar-breads in an honourable place. The instruments might be smeared with wax but not with oil or grease. Peter Quivil of Exeter, A.D. 1287, in Wilkins II. 131. William Russell, bishop of Sodor, A.D. 1350, *Ibid.* III. 10, says:

> Candida, triticea, tenuis, non magna, rotunda
> Expers fermenti, non mista sit hostia Christi,
> Inscribatur, aquâ non cocta, sed igne sit assa.

In the Assyrian Church the bread is baked by the priest and deacon whilst the others say morning prayer.

(22). Concil. Chelsea, A.D. 787, Can. 10: Let bread be offered by the faithful, not crusts. Concil. Tolet. XVI. A.D. 694, Can. 6 forbids the offering of crustulam in rotunditate. The oblation-loaves were called oblatae (sc. hostiae) contracted into obleæ or ubbles and had marks impressed upon them XPG or IHG, as is now done in the Eastern church. Lingard's Anglo Saxon Church, I. 292, Bridgett. I. 170.

(23). Epiphanius, Gregory Nazianzen, Gregory I. quoted in Devoti Inst. Lib. II. Tit. II. § 45. Concil. Arelat. V. A.D. 554, Can. 1 requires the oblatæ used in the province to adopt the form of those used in the metropolitan church of Arles. Devoti, § 45, states that modern use is to consecrate a number of wafer-breads of the size of a penny for communicants called particles, and one larger one for the priest for the fraction.

(24). Concil. Carthag. III. A.D. 397, Can. 24 ap. Gratian III. Dist. I. c. 3; Edgar's Law 39, A.D. 960.

(25). Concil. Brac. III. A.D. 675, *Ibid.* III. Dist. II. c. 7 adds because it is altogether a mistake unless it is absolutely necessary.

(26). Egbert's Excerpt. 98, A.D. 740: Let the priests take care that the bread and wine and water be pure and sweet. If they do otherwise they shall be punished with them who offered to our Lord vinegar mixed with gall. Liguori Lib. VI. 206; Craisson § 3367.

wine (27). Neither water alone (28), nor ale (29), nor mead (30), nor milk (31), nor water flavoured with must (32) are allowed as substitutes; and both bread and wine must be offered together (33). Oil and frankincense (34) may also be offered, and in their season bunches of grapes (35) and ears of wheat, also milk and honey at Easter (36), but nothing else (37).

3. The offering itself is three fold (38): (1) The offering made

(27). Concil. Tribur. A.D. 895, Can. 19, says one part of water to two of wine. Alexander III. to archbishop of Upsala, A.D. 1180, in Decret. Lib. III. Tit. XLI. c. 13, says the quantity of water ought to be less than the quantity of wine. Concil. Sodor and Man, in Wilkins III. 11, A.D. 1350: Let water be added in such moderate quantity that the wine is not drowned in the water but the water in the wine.

(28). Apost. Const. VIII. 51; Apost. Can. 2; Cyprian Ep. 62 ad Caecilium. Those who used water only were called Hydroparastatæ or Aquarii in early times. Law 16, Northumbrian priests A.D. 950. Lynd. 226, says that if a priest cannot drink wine he can neither celebrate nor undertake a cure of souls.

(29). Apost. Can. 2; Concil. Winton. A.D. 1071, Can. 6.

(30). Concil. Autissiodor. A.D. 578, Can. 8.

(31). Concil. Brac. III. A.D. 675, ap. Gratian III. Dist. II. c. 7. Concil. Trull. A.D. 692, Can. 57.

(32). Concil. Brac. l. c. says that some reserve a linen cloth soaked in must for a whole year, and at the time of the sacrifice rinse a part of it in water for use.

(33). Concil. Araus. A.D. 441, Can. 17: The cup must be offered together with the box of breads and be consecrated with the mixture proper for the Eucharist. Craisson § 3386. Thomas Aquin. Qu. 80, art. 12: In consecration the representation of the Lord's Passion is set forth. Therefore the Body cannot be consecrated without the Blood. Maskell's Ancient Liturgy 136.

(34). Apost. Can. 2.

(35). But this is forbidden by Concil. Trull. A.D. 692, Can. 28.

(36). This is forbidden by Concil. Trull. A.D. 692, Can. 57.

(37). Apost. Can. 2: If any bishop or presbyter otherwise than our Lord has ordained concerning the sacrifice offer other things at the altar as honey, milk or strong beer instead of wine, any necessaries or birds or animals or pulse otherwise than is ordained let him be deprived, excepting grains of new corn or ears of wheat or bunches of grapes in their season. For it is not lawful to offer anything besides these at the altar, and oil for the holy lamp and incense in the time of the divine oblation. Concil. Carthag. III. Can. 24; Concil. Brac. III. l. c.

(38). Irenaeus Fragment in ante-Nicene Library, IX. 176: For [1] we make an offering to God of the bread and the cup of blessing, giving Him

by the faithful to God of His own gifts the visible creatures of bread and wine or corn and grapes (39) in thanksgiving for His having caused the earth to produce them for the support of life (40). This is termed the offertory and the materials offered are termed sacrifices (41) or eulogies (42). (2) The common offering or corporate presentation of a selection from these materials mystically prepared so as to represent (43)

thanks that He has commanded the earth to bring forth these fruits for our nourishment. And then [2] when we have perfected the oblation [3] we invoke the Holy Spirit that He may exhibit this Sacrifice both the bread the Body of Christ, and the cup the Blood of Christ, in order that the receivers of these antitypes may obtain remission of sins and life eternal.

(39). That in some places the people regularly offered corn and grapes, out of which the deacon prepared the bread and wine, seems to be implied in Διδαχή, IX. 4, Cyprian Ep. 75, 6, quoted note 62. Ignat. Rom. c. 4 quoted by Iren. v. 28, 4: I am the grain of God and am ground by the wild beasts' teeth that I may become the bread of Christ. Also v. 2, 3, quoted note 51. Augustin De Civ. Dei, XVI. 37: Christ's is the multitude of corn and wine, *i. e.* the multitude which corn and wine gathers in the sacramental representation of His Body and Blood.

(40). Tertullian De Cast. c. 7, speaks of laymen offering in this sense. Justin adv. Trypho. 28, 117. Iren. Haer. IV. 18.

(41). Justin, Trypho, 41, 46: He speaks of those Gentiles who in every place offer sacrifices to him, *i. e.* the bread of the Eucharist. Tertullian De Vest. Femin. II. 11; Cyprian De Orat. Dom. c. 4: When we celebrate divine sacrifices with God's priest. *Id.* De Op. et Eleemos. c. 15: You are wealthy and rich, and you believe you celebrate the Eucharist without a sacrifice, and take part of the sacrifice which the poor has offered. Origen contra Cels. VIII. 21, calls them bloodless sacrifices. Apost. Const. II. 57: After this let the sacrifice (*i. e.* the offertory) follow, the people standing and praying silently. Isidor. De Offic. c. 28: Two things are offered to God, viz.: gifts and sacrifices. Gift is whatever is given in gold and silver; sacrifice is the victim, and whatever is consumed or placed on the altar. *Ibid.* c. 15: Ordo missæ vel orationum quibus oblata Deo sacrificia consecrantur.

(42). Apost. Const. VIII. 34.

(43). Gal. III. 1: Before whose eyes Jesus Christ hath been set forth crucified among you. Cyprian Ep. 62 (Oxf. 63), 4: In the priest Melchizedeck we see prefigured the sacramental representation of the sacrifice of the Lord; c. 14: If Jesus Christ is Himself the Chief Priest of God the Father and Himself first offered Himself a Sacrifice to His Father . . .

that Body in which Christ by His obedience cancelled man's disobedience (41) and in which the faithful are presented to God together with Him (45). This is termed the presentation of the sacrament (46), the sacrifice (47), the offering the bread of propitiation (48), or the commemoration (49). And (3) the heavenly offering or carrying of the earthly commemoration by the Angel to the altar on high, and its presentation there by the great High Priest (50), whereby the sacramental signs become the

surely that priest truly performs Christ's delegacy who imitates that which Christ did. Augustin in Ps. 40, 6, and Heb. x. 5. Tertullian adv. Marcion III. 19; IV. 40: He makes it His Body by saying, This is my Body, *i. e.* the figure of My Body. A figure these could not be unless these were first a veritable body. The Roman Canon of A.D. 400, ap. Duchêsne p. 170, calls this offering, Figura Corporis et Sanguinis Jesu Christi. Apost. Const. v. 13, calls these eulogies the antitypal mysteries of His precious Body and Blood; VI. 30: Offer the acceptable Eucharist the representation of the royal Body of Christ. Innocent ap. Gratian III. Dist. I. c. 73. Theodoret. Dial. II.

(44). Iren. Haer. v. 17, 1: The Lord has restored us into friendship through His incarnation having become the Mediator between God and man, propitiating for us the Father against Whom we had sinned, and cancelling our disobedience by His own obedience.

(45). Iren. v. 20 and 21: Christ summed up all mankind in himself. Augustin De Civit. Dei, x. 6: Whereby most truly the whole redeemed community, *i. e.* the congregation and society of the saints are offered to God as a universal sacrifice by the Great High Priest, Who in His passion offered Himself for us, that we might be the Body of so great a Head . . . This is the sacrifice of Christians, for we, being many, are one Body in Christ. Which even now the Church reproduces in the sacrament of the altar known to the faithful that it may be shewn to it that in that which it offers it is itself offered. *Ibid.* x. 20; XVII. 20; XXII. 10.

(46). Concil. Araus. A.D. 441, Can. 17: Propositio sacramenti. Hence Theodori Poenit. I. XII. 3, in Haddon & Stubbs, III. 186, calls it panis propositionis. Also Isidor. Pelus. A.D. 410, Lib. I. Ep. 123.

(47). Iren. IV. 18, 1: The oblation of the Church . . . offered throughout the world is accounted with God a pure sacrifice. *Id.* IV. 17, 5; Concil. Tolet. 1, A.D. 400, Can. 5, speaks of the daily sacrifice of the Church. Const. 2 Peckham A.D. 1281: Christ does not operate in the Sacrifice according to His immense plenitude.

(48). Concil. Tolet. XIII. A.D. 683, Can. 10.

(49). Paschal ap. Gratian III. Dist. II. c. 7.

(50). I Clem. 36: Christ is the High Priest of our oblations. Iren.

true Body and Blood of Christ (51). This is termed the con-

Haer. IV. 18, 6: It is His will that we should offer a gift at the altar . . . The altar then is in heaven (for towards that place are our prayers and oblations directed), the temple likewise. Origen contra Celsum VIII. 26: It is our duty . . . to ask the Only begotten as our High Priest to present the prayers which ascend to Him from us to His God and our God. The Roman Canon, A.D. 400, ap. Duchêsne 170: Command these things to be carried by the hand of thy Angels to the altar on high as Thou didst vouchsafe to receive the gifts of Thy holy servant Abel, and the sacrifice of our patriarch Abraham, and the offering of the supreme priest Melchizedeck. Mozarabic Missal: Be present Jesu Thou good High Priest in our midst as Thou wast present in the midst of Thy disciples; and hallow this oblation that we may receive hallowed things by the hand of Thy holy Angel. Hieronym, ap. Gratian III. Dist. II. c. 89: The Priest of God the Father is the Son of God, not according to the divine, but according to His human nature in which He offered Himself by means of His passion that he might be at once both Priest and Sacrifice.

(51). Ignat. ad Smyrn. c. 4: [Separatists] see not the Eucharist to be the Flesh of our Saviour Jesus Christ. *Id.* ad Ephes. 20, calls it the medicine of immortality. Justin Martyr. 1 Apol. 66: Not as common bread and common drink do we receive these; but as Jesus Christ having been made flesh by the Word of God had flesh and blood for our salvation, so likewise the food which is blessed by the prayer of His word, and from which our flesh and blood by transmutation are nourished is the Flesh and Blood of that Jesus Who was made flesh. Iren. Haer. IV. 18, 4: The bread over which thanks have been given is the Body of our Lord; and v. 2, 3: The corn . . . . having received the Word of God becomes the Eucharist, which is the Body and Blood of Christ. Ambros. ap. Gratian III. Dist. II. c. 41: Before the blessing of the heavenly words it is called an outward sign (species), after the benediction the Body is therein present (significatur). *Ibid.* c. 55: Before the sacramental words, ordinary bread lies on the altar; when the words of consecration are added, out of bread it becomes the Flesh of Christ. *Ibid.* c. 56, 19 and 91; Augustin. *Ibid.* c. 61: Not all bread but that which receives Christ's blessing becomes the Body of Christ. *Ibid.* c. 41, 45, 46, 51, 58, 60, 61, 72, 92. Hieronym. *Ibid.* c. 49, 87, 88; Hilarius *Ibid.* c. 79 and 82; Berengar. *Ibid.* c. 42. Ambros. *Ibid.* 6, 67 and Cans. XVI. Qu. I. c. 21: They who live of the altar transform bread and wine by means of the immaculate benediction into the Body and Blood of our Lord Jesus Christ. Chrysostom Hom. 1, On the betrayal of Judas: It is not man who causes the oblation to become the Body and Blood of Christ, but Christ Himself, Who was crucified for us. The priest representing Christ stands and pronounces the words, but the power and the grace are from God. This is My Body He says. This word transforms the oblations.

formation of the sacrament (52) or the hallowing of the oblation(53), and is effected by the power of the Holy Ghost (54) upon the invocation of the presbyters (55). In the East the power of the Holy Ghost is sacramentally imparted to the bread by anointing it with holy oil.

4. Out of respect for so great a mystery (56) in which, through the door of Christ's humanity (57), the faithful obtain access into the presence of God, the Eucharistic celebration has ever

And just as the words Increase and multiply and fill the earth were once spoken, but throughout all time give to human nature the power of generation, so also the words This is My Body once pronounced produce a perfect Sacrifice at each table in the Churches from that day to this, and from now to our Lord's second coming. Ambros. De iis qui myst. init. c. 11 : If human benediction is able to change the nature, what shall we say of the divine consecration in which the words of our Saviour take effect.

(52). Isidor. De Eccl. Offic. I. 13.

(53). Stat. Eccl. Ant. A.D. 505, Can. 33.

(54). John XIV. 16, 18, 23 ; VI. 63 : It is the Spirit that quickeneth ; Iren. V. 36, 2 : The presbyters, the disciples of the apostles affirm that they ascend through the Spirit to the Son and through the Son to the Father. IV. 18, 5 : The bread which is of the earth having received the invocation of God is no longer bread but the Eucharist. Hippolyt. in Prov. therefore calls the Spirit "the Mother of Christ." Gelasius, A.D. 494, ap. Gratian, Caus. I. Qu. I. c. 92 : How shall the Holy Spirit when invoked come to the consecration of the divine mystery if the priest who prays Him to be present full of criminous thoughts is repugnant to Him." Isidor. De Off. I. 18, 4: The sacrifices become the sacrament by the invisible action of the Holy Spirit. Baeda Hom. in Epiph. 175 : The creature of bread and wine is transformed into the sacramental sign (sacramentum) of Christ's Flesh and Blood by the ineffable hallowing of the Spirit. Elfric's Hom. in die Pasch. p. 4-7 : Great is the difference between the invisible might of the holy Housel and the visible appearance of its own nature. By nature it is corruptible bread and wine, but by the power of the divine Word it is in sooth Christ's Body and Blood. Iren. V. 2, 3 : When the mixed cup and the prepared bread receive the Word of God, the Eucharist becomes the Body of Christ. Muratori Liturgia I. 247.

(55). Iren. Haer. I. 13 ; Hippolyt. Haer. VI. 34.

(56). Isidor. ap. Gratian, Caus. I. Qu. I. c. 84, calls it a sacramental representation (mysterium) because it has a secret and hidden meaning (dispensatio). Gelasius, *Ibid.* c. 92.

(57). John X. 9 ; Heb. X. 10.

been surrounded with most particular regulations extending (1) to the persons of those who are allowed to offer, (2) to the external necessaries and observances in offering, and (3) to the special times and modes of offering. It is, however, a moot point whether the worship described by St. John, as seen by himself in a vision on the Lord's day when cut off from his people on the lonely island of Patmos, upon which these regulations are founded, represents the worship of the Church as then practised, idealized for heavenly use, or whether it gives a glimpse of heavenly worship held up for the imitation of the Church upon earth (58).

5. All the faithful are privileged to offer, either directly at the solemn Eucharist, or indirectly at the ordinary public Eucharist "ubbles" of bread and cruets of wine every Sunday (59). These offerings or eulogies appear in early days sometimes to

(58). The Ancient of days like to a man is represented as seated on a chair in the midst with 24 presbyters around him (Rev. I. 13 ; IV. 2, 3, 4). White vestments, 7 candlesticks, an altar and incense and a sealed book are there (I. 12 ; IV. 4 ; V. 8 ; VIII. 3). Before the chair and in the midst of the presbyters is a Lamb slain and under the altar souls of martyrs (v. 6, 8 ; VI. 9). Angels or deacons are about and an innumerable company of the elect singing praises to God and to the Lamb (v. 11, 12 ; VII. 9, 10).

(59). Concil. Matiscon II. A.D. 585, Can. 4 : Let an oblation of bread and wine be offered by all, both men and women every Sunday. Theodori Poenit. II. VII. 4, in Haddan and Stubbs, III. 196. A woman may make oblations according to the Greeks but not according to the Romans. Bona Lib. II. c. 9, § 1, quotes an old Ordo Romanus found in Muratori, I. p. 991 : Whilst the singers sing the people make their offerings, *i.e.* bread and wine, and they offer on white napkins (fanones) first men, then women ; last of all priests and deacons offer. From this and from the 9th century Ordo ap. Duchêsne, p. 442, it appears that women then made offerings at Rome. Walafrid Strabo, A.D. 849, c. 22 : Some offer inordinately who valuing oblations by their number constantly offer at masses at which they decline to assist. Hincmar, A.D. 852, c. 16, 2, forbids any one to offer more than "one oblation-loaf (oblata) for himself and his family," and directs all other gifts to be made after service. Maldonatus De Caer. Diss. II. § 17, no. 11, states that in 1569 A.D. offerings of bread and wine were still made in some places in France. Le Brun, A.D. 1716, states that in some parishes of the diocese of Rièz they offer at masses for the dead a dish of meal, a loaf and a bottle of wine. Bona I. 23, § 3, insists on the importance of offering personally. At Milan the Vecchioni still offer bread and wine.

have been placed by themselves upon the altar (60), but usually to have been received by the bishop and deacon; and it was the deacon's province at the solemn Eucharist to present them properly prepared upon the altar (61). Whenever offerings were made in grain or flour the mystical preparation must have taken place during the early part of the service (as is still the custom in the Assyrian Church), or else (as is now the custom in the East) before the service, at a special service of preparation called the prothesis (62). In the Roman and Gallican Churches where bread and wine were offered already prepared in the 4th century, the preparation in the service was confined to mixing the cup; but to ensure the purity of

(60). Pitra Jur. Eccl. Gr. I. 544; Routh's Rel. Sacr. III. 230.; Ambros. De Sacram. v. 2; Augustin. Epist. III. ad Victorian. The practice continued at Milan till recent times (Bona I. p. 184) and existed in Gaul in the 6th century. Greg. Turon. Hist. Franc. IX. 3; X. 8. Theodoret. v. 18, relates that the emperor Theodosius went up to present his gift.

(61). In Col. I. 25, 28, St. Paul calls himself the deacon of the Church and says that it is his desire as such to present every man to God in Christ as a perfect Christian. Pseudo-Hieronym. ap. Gratian I. Dist. XCIII. c. 23: Deacons place the offering upon the altar. Epist. ad Ludifred. *Ibid.* 1 Dist. XXV. c. 1: It is the business of deacons . . . to place the offering on the altar. Ordo Romanus of 9th century ap. Duchesne, p. 443, describes the offerings of bread as being made to the bishop and of wine to the deacon as they went round the Church. The deacon then placed the requisite amount of each on the altar.

(62). Possibly this preparation is referred to in the Διδαχή IX. 4: As this bread was scattered upon the mountains and gathered together became one, so let Thy Church be gathered together from the ends of the earth. Iren. III. 17, 2; Cyprian Ep. 75 (Oxf. 69) 6: When the Lord calls bread His Body moulded together from the uniting of many grains, He indicates a united people. Heb. X. 5: A body hast Thou prepared me. Justin Martyr. I. Apol. c. 67, speaks of the bread and mixed cup being brought in ready prepared. According to the 9th century Ordo ap. Duchêsne, p. 443, the deacon is directed to choose out of the loaves offered by the people a sufficient number for the communicants, and to arrange them on the altar in three or five rows. The service of the πρόθεσις consists with the Greeks in cutting off pyramid-shaped fragments from the holy bread and arranging them in 3 rows on the altar. In the Assyrian Church the preparation includes kneading and leavening the dough; then adding the holy leaven handed down from the apostles' times, and the holy oil, and baking the loaves.

the offering (63) those undergoing penance were excluded from contributing to it, even when they were allowed to communicate(64). After the eleventh century, when solemn Eucharists fell into disuse, the offering of the eulogies made by the sub-deacon at the ordinary public Eucharist took the place of the people's offerings at the solemn Eucharist (65), and penitents, as well as others, were then allowed to make pecuniary gifts or alms (66), which public opinion has since frequently confounded with the offertory (67).

(63). Elfric's Can. 17, A.D. 957. Iren. IV. 17, 5, insists on its being a pure offering; Leo I. added to the canon the words "a pure offering, a holy offering, an unspotted offering."

(64). Concil. Nic. A.D. 325, Can. 11: [The last] two years let them communicate without the oblation. Concil. Elib. A.D. 305, Can. 28: The bishop shall not receive a gift from him who may not communicate. Apost. Const. III. 4; Stat. Eccl. Ant. A.D. 505, ap. Gratian, 1 Dist. XC. c. 2, forbids the offerings of discordant brethren to be received. Concil. Ilerd. A.D. 523, Can. 13, forbids the offering to be received of one who allows his children to be baptized in heresy. Hieronym. *Ibid.* Caus. XXIV. Qu. I. c. 28; Syn. Patricii, Can. 12, in Haddan and Stubbs, II. 329: Whatever Christian is put out of communion, let not his offering be received. Concil. Mogunt. A.D. 847, ap. Gratian, Caus. XIII. Qu. II. c. 30; Nicolaus A.D. 864, *Ibid.* Caus. XXXIII. Qu. II. c. 15, permits a matricide to communicate after ten years, but not to make an offering till the whole twelve years have expired. Eugenius III. A.D. 1146, in Decret. Lib. v. Tit. XVII. c. 2, allows the viaticum to be given to criminals but forbids their offerings to be received. Concil. Lat. III. A.D. 1179, *Ibid.* Tit. XIX. c. 3, forbids usurers' offerings to be received. Innocent III. *Ibid.* Tit. XXXIX. c. 28, requires the dead to be absolved before their offerings may be received. Simeon of Thessalonica, in Neale XXIV: Neither ought priests to receive offerings for sacrifices from those who are open and notorious sinners . . . for mutual communion arises from the offerings which are brought to the altar, and it is not meet that the unworthy should partake in the sacrifice.

(65). The bread was required to be provided by the parishioners by Const. I. Gray, A.D. 1250; Const. 27, Peckham, A.D. 1281; but in many places the incumbent under a collegiate Church was required to provide the elements. See Maskell's Early Liturgy of the Church of England, p. 48.

(66). Justin 1 Apol. c. 65, states that after the distribution to each "they who are well to do and willing give what each thinks fit, and what is collected is deposited with the president who succours the orphans and widows. See Isidor. De Offic. c. 28, quoted note 41.

(67). Pecuniary gifts are mentioned by Concil. Emeritan. A.D. 666, Can. 14. Gemma Animae in 12th century says: Because the people did not

6. The proper minister to hallow the offering, or as it is commonly said to make the oblation, is a bishop or presbyter ([68]). In early days the hallowing was a visibly corporate act. Whilst the bishop prayed the presbyters stood round and united their prayers with his ([69]). In the bishop's absence any presbyter could take his place, but rural presbyters only when city presbyters were absent ([70]). Under no circumstances could a deacon hallow the Eucharist ([71]), but formerly besides presenting the pure offering upon the altar he held the cup during the hallowing prayer, and thus in a sense consecrated it ([72]).

communicate it was not necessary that the bread should be so large, and it was therefore ordered that it should be in the shape of a penny and that the people should offer pennies instead of an offering made of flour. Concil. Tolet. XI. A.D. 675, Can. 6, ap. Gratian, Caus. I. Qu. I. c. 100, forbids any pecuniary gift being asked from those who come to communion. In the Assyrian Church there is no almsgiving at the Offertory. Hincmar, A.D. 852, (quoted note 59 ; Bernold, A.D. 1080, states that "collections for the use of the poor or the restoration of Churches" ought to be made at a suitable time and place and not at the celebration of masses.

(68). Concil. Nic. A.D. 325, Can. 18 ; Cyprian Ep. 5 ; 1 Ep. Clem. ad Cor. c. 40 ; Augustin ap. Gratian III. Dist. II. c. 26 and Caus. I. Qu. I. c. 96: Nor yet can he bless the bread, however great his merit, unless he be ordained.

(69). Ignat. ad Eph. c. 20, ad Phil. c. 4 ; Apost. Const. VIII. 12 : Let the presbyters stand on the bishop's right hand and on his left. Innocent Epist. ad Decent. c. 5, A.D. 416, states that the presbyters offered with the bishop on ordinary days. Concil. Agath. A.D. 506, Can. 21, ap. Gratian III. Dist. I. c. 55 ; Concil. Aurel. I. A.D. 511, Can. 27, *Ibid.* III. Dist. III. c. 5, requires village priests to repair to the bishop's church for the purpose of offering with him on the greater festivals. Concil. Tarracon. A.D. 516, Can. 7 ; Concil. Arvern. A.D. 535, require the same. Liguori VI. 232. Duchêsne Origines, 167 ; Maskell's Ancient Liturgy, 119. See note 76.

(70). Concil. Neocæsar, A.D. 314, Can. 13, ap. Gratian I. Dist. XCV. c. 12 ; Concil. Brac. II. Can. 36, A.D., which calls them forastici presbyteri.

(71). Concil. Nic. A.D. 325, Can. 18.

(72). Iren. Haer. I. 13, 2, complains that the heretic Marcus handed mixed cups to women bidding them consecrate them in his presence. In Ambros. De Offic. I. 41, the deacon Laurence says to bishop Sixtus II. : Experire utrum idoneum ministrum elegeris cui commisisti sanguinis consecrationem, which Devoti explains as meaning sanguinem consecratum ; but the deacon actually took part in consecrating the cup by bringing the cup into contact with the consecrated Ubbles. Thus Ordo I. in Muratori, p. 985 : At the

He also conducted the whole ceremonial of the service, including in the West the fraction after consecration (73). When approved forms of corporate prayer became general as they did in the 4th century (74), the co-operation of many presbyters in consecrating the same elements was discontinued. The use at Rome was for the presbyters to consecrate separate elements simultaneously (75) some of them doing so in separate Churches. Ultimately simultaneous consecration gave place to consecutive consecrations,

words Per ipsum et cum ipso [in the canon the archdeacon] lifts up the cup with the offering-cloth passed through the handles and holding it elevates it close to the pontiff. The pontiff then touches the cup on the side with the Ubbles (oblatae). . . . [Afterwards] the pontiff sets the Ubbles in their place and the archdeacon sets the cup by their side, passing the offering-cloth again through the handles." In the Ordo Amandi, A.D. 800, ap. Duchêsne, p. 445: And when the pontiff comes to the words Omnis honor et gloria he takes up the two Ubbles in his hands and the deacon holds the cup and elevates it slightly until he comes to the words Per omnia saecula saeculorum. In the 11th century, as appears from the treatise of Joannes Abrincensis, ap. Migne Patrol. 147, the deacon's share was less, but the deacon still held the paten for the fraction. Deacon and priest together took hold of the right corner of the corporal to uncover the Host, and together they uncovered, elevated and covered up the Chalice. Hence Bona. III. 217, observes that, because of the deacon's share in consecrating the cup, the priest says of the bread Offero, but of the cup Offerimus in the plural. Concil. Laodic. A.D. 363, Can. 25, forbids the sub-deacon "to give the Bread or to bless the cup," recognising the blessing of the cup as one of the deacon's duties. Maskell, 85.

(73). Not in the Eastern Church. Theodori Poenit. I. II. 14, in Haddan & Stubbs, III. 192: Deacons with the Greeks are not allowed to break the hallowed Bread, nor to say the collect nor the Dominus vobiscum [*i.e.* the consecration prayer, those words preceding the Sursum corda and preface], nor the post-communion prayers (completas).

(74). Διδαχή, X. 7: But suffer the prophets to give thanks in what words they will, implies that there was then no form of words prescribed for use by bishops. Cyprian De Orat. Dom. c. 4: When we meet together with the brethren and celebrate divine sacrifices with God's priest we ought not . . . to cast to God with tumultuous wordiness a petition that ought to be commended by modesty," implies the same. The Roman canon appears to have been fixed in the time of Damasus, A.D. 366; the written Greek liturgies also date from the 4th century.

(75). Liber Pontificalis, I. 139: Zephyrinus established the custom of holding patens of glass before the presbyters and for deacons to hold them

all of which were however deemed to be part of one and the same Eucharist. After the 7th century simultaneous consecrations were only practised on the festivals of Easter, Pentecost, Christmas and St. Peter, and other special occasions, such as a dedication-festival. With the growth of the parochial system they disappeared altogether in the 13th century, except at ordinations (76); and consecration by a single priest became usual at the chief or quasi-solemn Eucharist as well as at votive and private Eucharists.

7. Although Christ Who was God could at any time hallow the Eucharist and as a fact did institute it after supper, yet priests who are men cannot hallow the offerings which they make for themselves and their people without the aid of the Holy Ghost, to obtain which collective prayer and fasting are ordinarily necessary (77). No priest can, therefore, make the oblation without the presence of two or at least one person to respond to his prayers (78), and when he has begun should always complete it himself (79). If possible some other presbyter ought also to be present to supply his place in case of illness (80)

whilst the bishop celebrated mass, the presbyters standing upright by him." Warren, Celtic Church, 128, states that in Britain two presbyters at least were necessary to consecrate the Eucharist. Theodori Poenit. II. II. 7, A.D. 673, in H. & S. III. 191 : It is lawful for [single] priests to celebrate masses.

(76). Concil. Clovesho, A.D. 747, Can. 30 and Const. 26, Peckham, A.D. 1281, require such a con-celebration for a deceased bishop. Pseudo-Isidor. ap. Gratian III. Dist. I. c. 59 : On the more solemn days let a bishop have 7 or 5 or 3 deacons . . . and let the presbyters stand right and left . . . and give consent to his sacrifice. Innocent III. in Decret. Lib. I. Tit. VI. c. 28, speaks of the con-celebration at an ordination.

(77). Acts XIII. 2 ; Conf. Math. XVII. 21 ; 1 Cor. VII. 5.

(78). Concil. Mogunt. A.D. 813, Can. 43 : No presbyter, as it seems to us, can alone properly say mass. For how shall he say Dominus vobiscum [with which the consecration prayer commences] and many other things, unless some one be with him. Concil. Nannet. A.D. 898, ap. Gratian III. Dist. I. c. 61, requires two. Can. 35, Edgar, A.D. 960, says some one. Cap. 7, Theodulf, A.D. 994, says two. Walafrid Strabo, c. 22, says three.

(79) Theodori Poenit. II. c. 10, A.D. 673, in H. & S. III. 192 ; Concil. Tolet. VII. A.D. 646, Can. 2, ap. Gratian, Caus. VII. Qu. I. c. 16 ; Rom. Syn. A.D. 743, Can. 14, *Ibid.* III. Dist. I. c. 57.

(80). Concil. Tolet. VII. A.D. 646, Can. 2, l. c. ; Concil. Tolet. XI. A.D. 675; *Ibid.* Caus. VII. Qu. I. c. 15, and III. Dist. I. c. 58.

and no Eucharist can be solemnly celebrated without a deacon (81). The latter that he may be ready to perform his ceremonial duties (82) should wear an alb only when he reads the Gospel and at the time of hallowing (83). Hence if a presbyter discharges the deacon's duties he throws back his cape at these times over his shoulders without removing it (84). At a private consecration a collet or clérk suffices. Both the presbyter and those who offer with him ought to be fasting except on Maunday Thursday (85), and if a presbyter is asked to commend the dead when not fasting he should only do so by prayer (86). The priest who hallows the offering ought always to communicate himself(87)

(81). Pseudo-Hieronym. ap. Gratian I. Dist. XCIII. c. 23 : Sine diacono sacerdos nomen habet, ortum non habet, officium non habet . . . Elfric's Can. 16, A.D. 957 : The priest that remains without a deacon has the name not the attendance of a priest. Concil. Nannet. in Decret. Lib. III. Tit. I. c. 8 : That every priest having a cure of souls have someone with him to read the Epistle and Gospel. Alexander III. to bishop of Exeter in Decret. Lib. I. Tit. XVII. c. 6 : A priest cannot discharge the solemnities of masses alone, without the suffrages of an assistant.

(82). Apost. Const. II. 57.

(83). Stat. Eccl. Ant. A.D. 505, Can. 41 ap. Gratian I. Dist. XCIII. c. 9 : Let the deacon wear only an alb at the time of the oblation or Gospel reading. Apost. Const. II. 57 : Let the deacons stand near at hand in close and small girt garments. Concil. Tolet. IV. A.D. 633 ap. Gratian, Caus. XI. Qu. III. c. 65, mentions the stole (orarium) and alb as the distinctive garments of the deacon. Concil. Laodic. A.D. 363, Can. 22, forbids a sub-deacon to wear a stole and Concil. Tolet. IV. A.D. 633, Can. 40, forbids deacons to wear more than one stole, and that neither coloured nor wrought with gold.

(84). Theodori Poenit. II. II. 11, A.D. 673, in H. & S. III. 192 : Presbiter si responsoria cantat in missa vel quicumque, cappam suam non tollat, sed evangelium legens super humeros ponat. Micrologus, A.D. 1077, c. 9.

(85). Concil. Afric. Can. 8, ap. Gratian III. Dist. I. c. 49 ; Concil. Matiscon. II. A.D. 585, Can. 6.

(86). Concil. Brac. II. A.D. 572, Can. 10, calls it commendatio. So also Concil. Tolet. IV. A.D. 633, Can. 13.

(87). Theodori Poenit. II. v. 10, l. c. p. 195 : A priest or deacon who may not or does not wish to receive communion cannot lawfully celebrate mass. Concil. Tolet. XII. A.D. 681, Can. 5 : The priest is guilty of [mutilating] that true and singular Sacrifice as oft as he fails to partake [after offering] of the Body and Blood of Christ. Edgar's Law, 40, A.D. 960.

and likewise the assisting deacon and sub-deacon (88).

8. The Eucharist may not be offered in a private but only in a hallowed house (89) except in case of necessity or sickness (90), nor in the open (91) unless another priest or deacon holds the oblation in his hand (92), but it may be offered under an awning (93). It should always be presented upon a hallowed table (94) or altar (95), which in Churches at least consists of two parts (1) a fixed or moveable sub-structure, and (2) an altar-slab (96) or antimensa called also a super-altar (97). In the East the sub-structure is usually a moveable framework or

(88). Concil. Rothomag. A.D. 650, Can. 1 : Let him receive with reverence himself, and give to partake to the deacon and subdeacon who assist him at the altar.

(89). Concil. Laodic. A.D. 363, Can. 58 ; Egbert's Excerpt. 52, A.D. 740.

(90). Can. 25, Elfric. A.D. 957 ; Felix IV. ap. Gratian III. Dist. I. c. 11 ; Edgar's Law, 30, A.D. 960, Cap. 11, Theodulf, A.D. 994 ; Egbert's Excerpt, 52, A.D. 740.

(91). Concil. Martini ap. Gratian III. Dist. I. c. 29 : Ignorant and presumptuous clergy may not exercise their ministry in the open [in campum ministeria (*alias* mysteria) portare] or distribute the sacraments. Concil. Mogunt. A.D. 888, *Ibid.* c. 30, says that on a journey, if there be no church, mass may be said in the open (sub dio) or in tents, provided the tabula altaris is hallowed.

(92). Theodori Poenit. II. II. 2, l. c. p. 191 : Similarly a priest may say mass in the open if the priest himself or a deacon hold the oblation in his hands.

(93). Theodori Poenit. II. XIV. 12, l. c. p. 203 : The [Eucharistic] prayer may be offered under an awning (sub velamine) when necessity compels. Can. 11. Theodulf. A.D. 994 : It is not lawful to sing mass in any place but Churches, not in houses nor in any place but what God hath chosen, except it be in the army ; then let a tent be had to this use only and a hallowed altar.

(94). The table is spoken of by Dionysius of Alexandria, A.D. 258, in Euseb. VII. 9. A table is still preserved in the Lateran which is said to have been used by St. Peter. Craisson, § 3593.

(95). The altar (*θυσιαστήριον*) is mentioned by Ignat. ad Trall. c. 7 ; ad Phil. c. 4 ; Concil. Laodic. A.D. 363, Can. 19, also Edgar's Law, 31, A.D. 960 ; Cap. 11. Theodulf. A.D. 994; Innocent III. A.D. 1204, in Decret. Lib. I. Tit. XV.

(96). Concil. Mogunt. A.D. 888 ap. Gratian III. Dist. I. c. 30, calls it Tabula altaris.

(97). Archæological Journal, XXXV. 384.

trestle-table and is called the holy table (98) or the throne (99). Western rule requires it to be a tomb (100) or otherwise a chest containing the remains of one or more saints (101), whence it is called a martyry, sepulchre or confession (102). The altar-slab was in ancient times made of wood covered with silver or gold (103), as a portable altar is now (104); but whenever the substructure is a tomb, it is required to be of stone (105). The antimensa of the East is a large figured corporal (106).

9. The altar which may not have been used before on the same day (107) is required to be provided with proper ornaments

(98). Socrates, VI. 5, relates that Eutropius took shelter under the holy table at Constantinople; I. 27, 35, relates that Macarius furiously rushing towards the altar had overturned the table.

(99). Blackmore's Russian Catechism, Aberdeen, 1845.

(100). Socrates I. 12; Euseb. VII. 11, relates that in A.D. 257 Christians were forbidden to hold meetings or to enter their cemeteries (κοιμητήρια) but VII. 13, that Gallienus gave permission to recover what are called the sleeping-chambers (κοιμητήρια used as altars). Concil. Chelsea, A.D. 816, Can. 2; Lynd. 252.

(101). Concil. Nic. II. A.D. 787, Can. 7, because of Rev. VI. 9.

(102). Ambros. ad Marcellin. Ep. 22. Lingard's Anglo Saxon Church, II. 40.

(103). Sozom. IX. 1, relates that the daughter of Arcadius gave to the Church of Constantinople an altar covered with gold and precious stones. Alcuin. De Pont. v. 1224, mentions an altar covered with flakes of silver; v. 1490: He covered the altar with silver with gems and with gold; v. 1500: He made another altar covered with pure silver and precious stones. Devoti Lib. II. Tit. VII. § 12.

(104). Baeda. v. 10, relates that the brothers Hewald had a consecrated table for an altar. St. Cuthbert's portable altar of wood covered with silver still exists at Durham. Concil. Mogunt. A.D. 888, ap. Gratian III. Dist. I. c. 30; Can. 11, Theodulf, A.D. 994.

(105). Augustin Epist. 185, ad Bonifac. Optatus Milev. Lib. VI. Concil. Epaon. Can. 26, A.D. 517, ap. Gratian III. Dist. I. c. 31; Concil. Winton. A.D. 1071, Can. 5. Martene De Antiq. Rit. I. c. 3, art. 6, § 4; Bona Rer. Lit. I. c. 20; Bingham VIII. c. 6, § 15.

(106). Craisson, § 3614. Le Brun III. 590.

(107). Concil. Autissiodor, Can. 10, A.D. 578, ap. Gratian III. Dist. II. c. 97: It is not lawful on the same altar to say two masses on the same day; nor for a priest to celebrate on an altar after the bishop on the same day. Theodori Poenit. II. 1, l. c. p. 190.

and altar linen (108). These according to mediæval rule include four coverings (109), viz. an altar-cloth or pall (110) for which a simple frontal (111) or antependium is usually substituted, two towels or linen-cloths (112), or three when a frontal is used instead of a pall, and a fourth cloth not of silk (113), but of the finest linen called a corporal or body-cloth (114), on which the offering is laid to be hallowed (115). The corporal was formerly of large size and covered the whole altar (116) and is forbidden to be touched

(108). Concil. Ebor. A.D. 1195, Can. 8.

(109). Gratian III. Dist. II. c. 27, quoted below. The present Roman rubric, the authority for which is not earlier than 1568, requires three. Craisson, § 3610.

(110). Concil. Arvern. I. A.D. 535, Can. 3 and Pseudo-Clem. Ep. ap. Gratian III. Dist. I. c. 40, forbid altar cloths (pallae) given for the altar to be used for wrapping the dead or by a deacon for covering his shoulders, and orders the deacons to cleanse the altar-cloths (pallas) and sanctuary curtains (vela) if they are dirty within the sanctuary, but to thoroughly wash the altar-linen (velamina) and the corporals (sindones). Const. 5, Reynolds, A.D. 1322. Warren, 124, states that purple altar-cloths were in use in the Celtic Church.

(111). Const. 4, Winchelsea, A.D. 1305, mentions the frontal, *i. e.* the imperfect pall hanging down in front but not covering the altar. Lynd. 252, says that a frontal is elsewhere called a pall, but, p. 235, he appears to include the altar-cloth or pall among the altar-linen.

(112). These linen cloths are called linteamina in Const. 5, Reynolds, A.D. 1322, lintea in Gratian III. Dist. II. c. 27, and velamina *Ibid.* III. Dist. I. c. 40, and by Lynd. 235 ; tuellae in Const. I. Gray, A.D. 1250 and Const. 4, Winchel. A.D. 1305. Lynd. 249, 235, 248.

(113). Acta Sylvestri, ap. Gratian III. Dist. I. c. 46 and Dist. II. c. 27.

(114). Optatus of Milevis, Lib. VI. : In celebrating the Mysteries the wood is covered with a linen cloth. Sindon in Gratian III. Dist. I. c. 46, Const. 2. Langton, A.D. 1222, and Const. 7, Peckham, A.D. 1279 ; Corporale in Edgar's Law 33, A.D. 960 ; Can. 22, Elfric A.D. 957, Const. 5, Reynolds, A.D. 1322, Lynd. 249, 235. Egbert's Pontifical gives forms for the blessing of the Corporal (Surtees Society, Vol. XXVII). Leofric's Missal, p. 221. The corporal of the Greeks is covered with figures.

(115). Maskell's Ancient Liturgy, p. 82 Sarum : Ponatque panem super corporalia.

(116). Concil. Arvern. A.D. 535, Can. 7, forbids the body of a deceased priest to be wrapped in the opertorio Dominici Corporis. Bridgett's Hist. of Eucharist, I. 174. Isidor. Pelus. A.D. 410, lib. I. Epist. 123 : We consecrate the bread of presentation on fine linen. The Greeks call this εἰλητόν.

by a woman (117). Besides the Eucharistial and the four Gospels (118) nothing may be placed upon the altar. A step or gradine at the back appears to have been introduced in the 16th century and was authorized by Clement VIII. in A.D. 1600 (119).

10. For the service of the altar, the altar or housel-vessels are necessary (120). These should be hallowed (121) and ought not afterwards to be used for any profane purpose (122). They consist of a chalice (123), which in the earliest times appears to have been made of glass with a figure of the Good Shepherd

(117). Concil. Autissiodor, A.D. 578, Can. 37 : Let not a woman put forth her hand to the Lord's altar-cloth (ad pallam Dominicam). Cap. 6, Theodulf, A.D. 994.

(118). Leo IV. A.D. 850.

(119). Rock II. 500, shews that in 1532 there were no candles *on* the altar at Westminster. In the Caerimoniale Episcoparum, A.D. 1582, the altar is represented without cross or candles, but in the same book, A.D. 1600, it is represented with a Maltese cross flanked by 6 candles.

(120). Can. 22, Elfric A.D. 957 : Let his chalice be made of pure wood and also the paten. Gratian III. Dist. I. c. 44, 45 ; Cap. 8 and 18, Theodulf, A.D. 994.

(121). Ambros. ap. Gratian, Caus. XII. Qu. II. c. 70, speaks of the vasa ecclesiae initiata. Acta Sylvestri, *Ibid.* III. Dist. I. c. 46, directs them to be consecrated, and Leofric's Missal, p. 221, gives the forms. Can. 37, Elfric, A.D. 957 : Mass ought not to be consecrated with any other vessel but the chalice that is blessed for this purpose. Concil. London, A.D. 1175, Can. 16: That no bishop bless a chalice of tin. Innocent III. A.D. 1204, in Decret. Lib. I. Tit. XV, says that the chalice is consecrated with chrism. Chambers' Divine Worship in England has collected the English forms from the eighth to the fifteenth centuries.

(122). Concil. Brac. III. A.D. 675, Can. 2 ; Concil. Arvern. A.D. 535, Can. 8, forbid their being used for marriage-feasts. Cap. 10, Theodulf, A.D. 994, Concil. Tolet. XVII. A.D. 694, Can. 2.

(123). According to the Ordo St. Amandi, ap. Duchêsne 442, four different vessels were used at Rome in the ninth century : (1) the small chalice or cup (calix) used on ordinary days, (2) the large chalice (calix stationarius) with two handles for High days (the handles are mentioned in the Ordo ap. Muratori I. 978, 985) such as the one found at Ardagh and now in the museum of the Irish Academy at Dublin (Rock I. 164 ; Bridgett I. 219). These were exclusively used by the clergy. After the clergy had communicated, the chalice was emptied (3) into one or more communion-bowls (scyphi) full of unconsecrated wine, from which (4) the communion-cups (fontes) were replenished into each of which a portion of the consecrated

upon it (124), and also of a paten or offering dish (125) which was of large size, but does not appear to have been invariably used in lesser churches before the thirteenth century (126). The chalice may not be of wood (127), copper or brass (128), glass (129), wax (130), or horn (131); but both chalice and paten are required to be of gold or silver (132), or in case of poverty of tin (133). Two

Bread was dropped. Both clergy and people drank from tubes made of gold, silver, ivory, or glass. These are mentioned in Leofric's Missal XXII. Soto who was in England in Mary's reign states that the chalice-veil called filiola by the Spaniards (Isidor. 24, Hammond's Liturgies 285) was not used here, but in its place a silken tablet (serica tabella). Bridgett II. 62, however, can find no such article in ancient inventories.

(124). Tertullian De Pudicit. c. 10; Baronius a° 216, no. 13.

(125). Lib. Pont. Duchêsne, 139: Zephyrinus established the custom of holding patens of glass before the presbyters whilst the bishop celebrated mass, the presbyters standing upright by him, [to consecrate]; p. 246: mentions the substitution of patens of silver. The paten was a large offering dish, the size of which may be gathered from the fact related by Gregory of Tours, that a man profanely used it to wash his feet. Alcuin in Lingard's Anglo Saxon Church, I. 265, mentions it. After the offering had been presented in it, it was, according to Maskell, p. 85, given back to the sub-deacon who held it standing behind the deacon until the Lord's Prayer, when it was used for the fraction.

(126). The host according to Sarum use (Maskell, p. 82) was placed on the corporal for consecration and reserved in the pyx or box. Concil. Araus. A.D. 441, Can. 17, calls the box capsa. Also Hist. Monast. de Abingdon. Const. 32, Edmund, A.D. 1236: If the priest as some do [in receiving] takes it off the paten.

(127). Concil. Tribur. A.D. 895, ap. Gratian III. Dist. I. c. 44: At one time golden priests used wooden chalices, now wooden priests use golden chalices. Edgar's Law 41, A.D. 960. Concil. Winton, A.D. 1071, Can. 16, Honorius III. in Decret. Lib. III. Tit. XLI. c. 14, ordered a priest to be deprived for celebrating without fire or water and using a wooden chalice.

(128). Gratian III. Dist. I. c. 45.

(129). Gratian III. Dist. I. c. 45, § 3: Let no one presume to consecrate in a chalice of wood or of glass. Lynd. 249.

(130). Concil. Winton. A.D. 1071, Can. 16.

(131). Concil. Chelsea, A.D. 787, Can. 10.

(132). Gratian III. Dist. I. c. 45; Concil. Westminster, A.D. 1175, Can. 16, orders it to be of gold or silver but not of tin. Const. 11. Langton, A.D. 1222. Lynd. 9, 249.

(133). Gratian III. Dist. I. c. 45. Lynd. 234.

candles or at least one should always be lighted (134) before the altar and incense be burnt at the time of the Gospel-reading and

(134). Concil. Elib. A.D. 305, Can. 34, forbids candles to be lighted in the day in a cemetery-church, "for the souls of the saints must not be disturbed" [*i.e.* before evening by the signal for service]. Concil. Tolet. XIII. A.D. 683, ap. Gratian, Caus. XXVI. Qu. v. c. 13, forbids the altar to be bare or the lights to be extinguished at the Eucharist. There are four distinct uses of lights (1) necessary, (2) symbolical or ceremonial, (3) ornamental, and (4) devotional. 1. Necessary lights are mentioned Apost. Const. VIII. 35 and Socrates V. 22, where the beginning of service [in the evening] is spoken of as the lighting of the lights. Socrates VI. 8, relates that Chrysostom, A.D. 401, introduced silver crosses on which were lighted tapers for processional use at nocturns. Hist. Monast. de Abingdon II. 375, A.D. 1180, directs two lights to be placed on the altar for this purpose at matins and vespers. 2. Symbolical or ceremonial lights are the candlestick and candle required by Stat. Eccl. Ant. A.D. 505, ap. Gratian, Dist. XXIII. c. 16, to be given to the acolyte for the Eucharistic celebration. Can. 14, Elfric, A.D. 957: He is called the acolyte who holds the candle at the divine ministration when the Gospel is read or the Housel hallowed, not to drive away darkness but to signify bliss to the honour of Christ Who is our Light. Can. 42, Edgar, A.D. 960: Let a light be always burning in the Church when mass is sung. Honorius III. in Decret. Lib. III. Tit. XLI. c. 14, deposed a priest for not having a light. Const. 4, Langton, A.D. 1223; Const. 5, Reynolds, A.D. 1322: Let two candles or at least one be lighted at the time of offering. John de Burgo Pupilla oculi, A.D. 1385: Without fire *i. e.* without light it is not lawful to celebrate. 3. Ornamental lights are mentioned by Hieronym. ad Vigilantium as being lighted to display a sign of joy. According to Alcuin, De Sanct. Eccl. Ebor. 280, 1494, there was at York a pharos consisting of three rows of nine lamps each suspended before the altar. Hist. Monast. de Abingdon II. 290, relates that Abbot Faritius, A.D. 1111, gave a 7-branched candlestick to the Church. According to the customs, II. 375, furnished to Ralph de Glanville, in 1188 A.D., a wax taper was kept burning before the high altar night and day, and on principal festivals seven were kept burning before the high altar and the same at high mass, and one before each altar in choir. See also II. 379, 382, 383. 4. Devotional lights were of many kinds. The injunctions of 1536 A.D. only allowed three, viz. (1) the beam light or devotional light of the parish sometimes called the common light, (2) the light before the sacrament and (3) the light before the sepulchre, also called the dead light or the soul light. Const. 8, Arundel, A.D. 1408, approved the practice. Lynd. 298. Micrologus, A.D. 1077, c. 11, states that a light is always required at a Eucharistic celebration.

the oblation (135), and no other necessaries ought to be neglected (136). In early times the sub-deacon was not allowed to handle the sacred vessels (137), but in the West this is permitted to sub-deacons and collets (138).

11. The priest who hallows the oblation should not be covered nor use a staff (139), nor have his feet bare (140), but according to Gallican rule, which after the tenth century became also the Roman (141), should besides his ordinary priestly garments wear a distinctive liturgical or Eucharistic vestment (142).

(135). During the first three centuries incense was only used to preserve the bodies of the dead. Tertullian Apol. c. 42 : "We use as much incense in burying Christians as others in fumigating the Gods." Apost. Can. 2 and Dionys. Eccl. Hier. III. 2, A.D. 500, first mention its use in the service. Concil. Rothom. A.D. 650, Can. 1 : At the time when the Gospel is read and when the offertory is ended let incense be placed on the oblation to commemorate the death of our Lord. Theodori Poenit. II. 1, 8, in H. & S. III. 191 : Let the Lord's incense be burnt on the birthday of the saints out of respect for the day. Edgar's Law 43, A.D. 960.

(136). Lynd. 249, says three washing-trays for washing (1) the corporals (2) the altar-cloths (3) the linen cloths.

(137). Concil. Laodic. A.D. 363, Can. 21, ap. Gratian, 1 Dist. XXIII. c. 26.

(138). Gratian 1 Dist. XXIII. c. 32 ; Concil. Brac. A.D. 563, Can. 10, *Ibid.* c. 31, forbids any of the readers to touch the sacred vessels unless they have been ordained sub-deacons ; Concil. Brac. II. A.D. 572, Can. 41 ; Concil. Agath. A.D. 506, Can. 66, *Ibid.* c. 30, forbids this to all the lower orders, *Ibid.* III. Dist. II. c. 23.

(139). Rom. Syn. A.D. 743, Can. 13, ap. Gratian III. Dist. I. c. 57 : Let no bishop, presbyter or deacon presume to enter upon the solemn celebration of masses with a staff (baculus), or with his head covered, because the apostle forbids men to pray in Church with covered head. See Maskell, p. 61.

(140). Concil. Chelsea, A.D. 787, Can. 10, possibly intended to forbid the use of the highland costume.

(141). Leo IV. A.D. 847, in Labbé VIII. 33 : Let no one presume to sing masses in a planet which he wears every day.

(142). In II. Tim. IV. 13, St. Paul refers to a cloak (φελόνη) which he may possibly have worn when offering the oblation, but it was certainly not a Eucharistic vestment. From it the Greek Church derives its φελόνιον=the Gallican casula or amphibalum. In Apost. Const. VIII. 13, the bishop is directed to put on his bright garment (λαμπρὸν ἐσθῆτα) which does not necessarily denote a distinctive garment, but only a new one, his best. The terms casula or amphibalum are first met with in Germanus, bishop of

The ordinary priestly garments worn by all members of the clergy indifferently (143), and likewise by laymen after solemn baptism (144) and at other stated times (145) consisted of (1) a white garment, alb or surplice (2) an amice or mystic head-cloth

Paris, 555-576 A.D. In the Roman Church the term is not found until the time of Stephen II. A.D. 752, when it appears as quodsulis. Duchêsne 367. Casula appears to be used by early Roman writers for a cassock, as in Leofric Missal, p. 261, where collets are directed to put on black cassocks (casulae); p. 258, clergy other than presbyters are directed to put on cassocks (casulae) and solemn vestments at the blessing of the chrism. Concil. Tolet. IV. A.D. 633, ap. Gratian, Caus. XI. Qu. III. c. 65, mentions planet (*i. e.* chasuble) and stole as the distinctive dress of a presbyter. Wihtraed's Law 18, A.D. 696, requires a priest to purge himself before the altar in his vestment. Can. 22, Elfric, A.D. 957: The priest shall have his mass-vestment. Edgar's Law 46, A.D. 960: That no priest minister at the altar without his vestment.

(143). Ordo S. Amandi, ap. Duchêsne, 440, speaks of deacons and subdeacons wearing albs such as they possessed either of linen or of silk and amices (anagolagia).

(144). Rabanus, A.D. 834, De Cler. Inst. I. 29, ap. Gratian III. Dist. IV. c. 91, says that before being anointed the baptized receive (1) the white garment, and after it have (2) their head covered with a mystic veil (See Baptism, note 48) to indicate purity and their royal priesthood. These garments have their counterparts in the colobion and cowl of monks, and the alb and amice of the clergy, which Isidor. Etym. XIX. 21, and Rabanus I. 15, calls respectively poderis and super-humerale. Rev. I. 12, describes the heavenly Priest as clothed with a garment reaching to the feet, and girt about the paps with a girdle; Iren. IV. 20, 11, explains these as "something priestly." Concil. Brac. I. A.D. 561, ap. Gratian, 1 Dist. XXIII. c. 32: All clerks should minister with close-cut hair, having their ears exposed (*i. e.* the head-cloth let down) and should after the manner of Aaron put on a garment reaching to the feet (talaris vestis) that they may be in glorious array. The head-cloth, the περικεφάλαια τοῦ σωτηρίου of Eph. IV. 17, called the amice (amictus) consisted of a broad linen band put over the head under or above the alb and fastened by a string. The Romans wore under the alb a subumblem, shoulder-cloth, or sudarium, which was really a distinct garment. Edgar's Law 33, A.D. 960: That every priest have a subumblem under his alb when he celebrates mass and every vestment decently put on. This subumblem is called anagolagium=anabolagium=ἀναβολαῖον in Ordo St. Amandi and superhumerale in Leofric Missal. 59. As the head-cloth was allowed to fall over the shoulders when the priest reached the altar, the Gallican head-cloth and the Roman shoulder-cloth appeared the same.

(145). Theodori Poenit. II. XIV. 11, in H. & S. III. 203: Out of respect for regeneration let prayers be said at Pentecost in albs, as they are said at

and (3) a girdle. In the Gallican Church the girdle was worn by the higher clergy ([146]), in the Roman it was confined to those below the diaconate ([147]). The liturgical vestment for the Eucharistic service in the Gallican Church was for presbyters the chasuble ([148]), for deacons the handkerchief, maniple or phanon ([149]). Both bishops, presbyters and deacons wore also a stole, variously put on as a distinctive mark of their office ([150]).

12. At Rome previously to the ninth century there appears to

Eastertide. This is probably the origin of the surplice being worn on solemn offering days.

(146). Coelestin. Ep. 4, ad episc. prov. Galliae, ap. Constantium, p. 1067, blames them for wearing a mantle and girdle as being contrary to ecclesiastical [sc. Roma] use.

(147). Duchêsne 367.

(148). Germanus ap. Duchêsne, l. c.

(149). Amalarius De Eccl. Offic. III. 19, A.D. 827, says the deacon places the cup on the altar and the handkerchief beside it. Const. 32, Edmund, A.D. 1236: Let the priest have near to the altar a very clean cloth bound round with another, and cleanly and decently covered to wipe his fingers and lips. At Rome the handkerchief called pallium linostinum was a ceremonial adjunct of the consul's dress (Duchêsne 369), and being used by the clergy as a mark of distinction was by Gregory ap. Gratian, 1 Dist. XCIII. c. 22, forbidden to all but Roman clergy. Duchêsne, p. 369, says that it was not attached to the person before the twelfth century.

(150). The stole (orarium) of the Roman Ordines prior to the tenth century appears to be only another name for the sudarium which was worn round the neck and upon the shoulders to prevent the planet being soiled. The stole of the East and of the Gallican Church was a scarf worn as a mark of distinction and probably first adopted in the fourth century in obedience to a law requiring all officials to have a distinguishing decoration. Concil. Laodic. A.D. 363, Can. 34, forbids sub-deacons and readers to usurp it. Isidore of Pelasium, A.D. 410, Ep. I. 136, says that the episcopal stole which he calls pallium is made of wool, the deacon's stole of linen. Chrysostom. Hom. on the Prodigal son, speaks of the linen band (*ἡ ὀθόνη*) with which deacons take part in the liturgy, and says that it was passed over the left shoulder, and compares its motion to the motion of angels' wings. It was worn by bishops, tied round the neck, one end hanging down in front and one behind, and called the pallium or *ὠμοφόριον*. The pallium of popes Agatho and Stephen III, is called stola in Lib. Pont I. 354, 472. By presbyters it was worn over both shoulders and was called simply stole (*ὠράριον*) or *ἐπιτραχήλιον*. Concil. Tolet. IV. A.D. 633, Can. 39, directs the deacon to wear it over the left shoulder. It is mentioned as a badge of both bishop, presbyter and deacon, by Concil. Tolet. IV. A.D. 633, ap. Gratian,

have been no distinctive liturgical dress (151). The dress of both clergy and laity consisted of (1) an under-garment of linen either with sleeves when it was called a tunic or without sleeves when it was called a colobus (152); (2) an upper garment called a paenula and in later times a planet; and (3) on solemn occasions an intermediate garment called a dalmatic (153). These garments became clerical when they ceased to be worn by laymen, and liturgical when they were used exclusively for Eucharistic purposes (154). Before the thirteenth century the planet had, however, assumed two forms: (1) that of the processional planet supplied with a cape and called distinctively the cope (155) or

Caus. XI. Qu. III. c. 65. Concil. Brac. III. A.D. 675, Can. 3, requires a priest to wear it at the oblation. Concil. Tribur. A.D. 895, *Ibid.* Caus. XVII. Qu. IV. c. 25: Let not presbyters go about unless vested in cope (stola) and stole (orarium).

(151). Coelestin. A.D. 432, Ep. 4, ad. episc. Galliae, ap. Jaffé, 369, censures the Gallican clergy for wearing a distinctive vestment. See Duties of Order, § 9. Duchêsne contends that the lengthy explanation of the meaning of Aaron's garments in the ordination-prayer which dates from the fifth century, shews that such garments were then unknown at Rome. John the deacon in the seventh century describes Gregory and his father Gordianus as wearing the same dress—a dalmatic and a brown planet.

(152). Cod. Theodos. A.D. 397, XIV. X. 1, requires senators to wear a colobus. Egbert's Excerpt. 153: A Roman canon says: Let whatever clerk is seen in Church without his colobion or cope . . . be excommunicated.

(153). The dalmatic was a garment with wide sleeves worn only by people of distinction. The Proconsular Acta 5, ap. Duchêsne 368, describing the martyrdom of St. Cyprian, A.D. 258, say: He put off his shepherd's cloak (lacerna byrro), knelt down and prostrated himself in prayer to God. When he had 'taken off his dalmatic and given it to the deacons, he stood there in his tunic (linea).' Symmachus, A.D. 513, granted the use of the dalmatic as a mark of distinction to the deacons of Arles; Gregory, A.D. 599, to the bishop of Gap and his archdeacon. See Vita Caesarii, c. 4, ap. Migne CXVII. p. 1016. Gregor. Ep. IX. 207. Lynd. 252. According to Germanus Ep. 2, ornamental sleeves were worn in the East and in the Gallican Church over the tunic, called manualia, manicae ἐπιμανίκια. The Gallican surplice with sleeves worn over it had all the appearance of the Roman dalmatic.

(154). Leo IV. A.D. 850, Hom. De Cur. Past.: Let no one sing mass without amice, alb, stole, maniple and chasuble. Const. I. Gray, enumerates the principal vestment, chasuble, alb, amice, girdle, stole and maniple. Const. 27, Peckham, A.D. 1281, mentions the same, excepting the stole.

(155). Theodori Poenit. II. II. 11 in H. & S. III. 192: The presbyter or

pluvial (156), sometimes the stola (157) and the principal vestment in English constitutions (158); and (2) that of the abbreviated circular planet used only for the oblation to which the Gallican name of chasuble was reserved (159). After the thirteenth century the chasuble became the Eucharistic vestment of the officiating priest exclusively, the dalmatic of the assistant deacon, the tunic of the sub-deacon (160). All other clergy attending at the altar were then directed to be vested in surplices (161); and a surplice was also prescribed as the vestment for the presbyter when he administered the communion to the sick (162). These various garments are by mediæval rule directed to be consecrated (163), and the linen ones washed by the deacon when necessary (164).

13. Of the three prayers called respectively the collect, the consecration-prayer and the post-communion, which constitute

whoever says responses at mass should not take off his cope (cappam), but only throw it back, when reading the gospel.

(156). According to Irish Ecclesiastical Record XI. p. 1085, the pluvial is (1) less ample than the ancient planet, (2) is cut open in front for convenience of walking, and (3) is furnished with a cape for protection from rain.

(157). Concil. Tribur. A.D. 895, ap. Gratian, Caus. XVII. Qu. IV. c. 25.

(158). Const. 1, Gray, A.D. 1250; Const. 4, Winchelsea, A.D. 1305.

(159). The Gallican chasuble was a large circular garment with ample folds reaching well nigh to the ground, and with a head stall for the wearer's head. It so nearly resembled the Roman planet that it was called planet by Concil. Tolet. IV. A.D. 633, ap. Gratian l. c. It was, however, a Eucharistic vestment in 575 A.D. whereas the Roman planet was not; for in Ordo S. Amandi, A.D. 800, the deacons lay aside their planets on entering the chancel. When the planet was confined in the Roman Church to Eucharistic purposes, it was reduced in size, and being made of richer material was cut away at the sides to give the hands free play, until it acquired the modern fiddle-shaped pattern. It still, however, went by the Gallican name; but the real Gallican chasuble according to Acta Eccles. Mediol. Tom. I. Lugdun. 1683, is required to be at least 5 feet in length.

(160). Const. 4, Winchelsea, A.D. 1305.

(161). Const. 5, Reynolds, A.D. 1322: We charge that they who attend at the altar be clothed with surplices. Lynd. 52, 236.

(162). Const. 7, Peckham, A.D. 1279, Lynd. 249.

(163). Pseudo-Isidor. A.D. 843, ap. Gratian III. Dist. I. c. 42; Honorius III. A.D. 1220, to bishop of London in Decret. Lib. I. Tit. XVI. c. 2.

(164). Pseudo-Clement, *Ibid.* III. Dist. l. c. 40, Conf. c. 29.

the part peculiar to the bishop and presbyters in the solemn service (165), the second or canon as it is usually called in the West (166), the action, contestation, illation and immolation of the Gallican rite, or the invocation in yet earlier times (167), is directed to be pronounced with great reverence and devotion of mind (168), care being taken to avoid mistakes (169). It may therefore never be said without book (170). In early times the

(165). Theodori Poenit. II. II. 14 in H. & S. III. 192 : Deacons with the Greeks do not break the hallowed bread nor say the collect (collectio) nor the consecration prayer (Dominus vobiscum) nor the completing prayers (completas). Micrologus, A.D. 1070, c. 4, says that properly there is only one collect before the reading, but this is little observed. Many weary those present by multiplying prayers. According to Concil. Milev. A.D. 402, Can. 12, only approved prayers may be used and these Micrologus says should never exceed seven in number.

(166). Innocent I. A.D. 416, Epist. ad Decentium, and Gregory, Ep. IX. 12, A.D. 596, call it *precem*, Augustin calls it *orationem* and *carmen*, ap. Gratian, Can. I. Qu. I. c. 87. Mabillon Mus. Ital. II. 48, states that Gregory first called it *canon*. Walafrid Strabo, A.D. 849, c. 22 : It is called the canon because it is the regular confection of the sacrament. Lynd. 49, says : "Canon is the same as rule . . . Mass is properly used of the prayer consecrating the Eucharist. All other parts of the service are either thanksgivings or intercessions." Διδαχή X. 7 : "Suffer prophets to give thanks in what words they will" seems to imply that a form was even then prescribed for presbyters who were not prophets. Duchêsne 168, refers the Roman canon in its present form to the time of Pope Damasus. The words Sanctum sacrificium, immaculatam hostiam are stated to have been added by Leo (A.D. 440-461), and three other phrases by Gregory ; see Baeda II. 1. The Roman canon was adopted at Milan between the Lombard invasion A.D. 568 and the capture of Genoa by Rotharis, A.D. 641 (Duchêsne 84) and in the Celtic Church in the ninth century. See Warren's Celtic Church, p. 158.

(167). Iren. I. 13, 2 : Protracting to great length the word of the invocation, IV. 18, 5 ; Hippolyt. VI. 34.

(168). Concil. Westminster, A.D. 1200, Can. 1 ; Const. 25, Langton, A.D. 1222 ; Const. 5, Reynolds, A.D. 1322 ; Lynd. 50.

(169). Gildæ Poenit. A.D. 573 in H. & S. p. 115 : If any one by mistake make any change in the sacred words where danger is noted let him fast three days. Concil. Ebor. A.D. 1195, Can. 3 : Let archdeacons take care that the canon of the mass is corrected according to some true and approved copy.

(170). Can. 32, Elfric A.D. 957.

canon appears to have been said aloud by the bishop, the presbyters accompanying him in an undertone (171), whence arose the practice of presbyters saying it secretly even when consecrating alone and of its being called the secret (172). Since the establishment of the parochial system, English constitutions require it to be said distinctly (173). In the thirteenth century the Roman custom was introduced of ringing the little or sacring bell within the Church when the canon commenced, and the great bell outside thrice at the elevation (174). Earlier English constitutions, however, forbid the ringing of the bell until the canon is concluded (175). The fraction at the solemn Eucharist was formerly performed simultaneously by all the presbyters present together with the deacons (176), but not by deacons among the Greeks, whilst the Agnus Dei was sung (177); but since the

(171). Ordo S. Amandi, ap. Duchêsne 444 : Bishops stand behind the pontiff with inclined head and presbyters right and left, each one holding a corporal in his hand. The archdeacon gives to each one two oblation loaves and the pontiff says the canon so that they can hear him, and they hallow the oblation loaves which they hold as the pontiff does his.

(172). Concil. Winchester, A.D. 1071, Can. 10 ; Concil. Ebor. A.D. 1195, Can. 3.

(173). Concil. Westminster, A.D. 1200, Can. 1 : That the words of the canon be roundly and distinctly pronounced by every priest in celebrating mass. Const. 6, Langton, A.D. 1222 : That the words of the canon, especially of the consecration, of Christ's Body be perfectly pronounced. According to Maskell, p. 115, it still continued to be said secretly for which Lynd. 49 assigns six reasons.

(174). Before the twelfth century the priest raised the Host and the deacon the cup at the close of the canon. The elevation during the canon is said to have been introduced at the end of the eleventh century by way of protest against the views of Berengar. Const. 1, Peckham, A.D. 1281 : Let the bells be tolled at the elevation of the Body of Christ, that the people who have not leisure to be present daily at mass may, wherever they are, bow their knee to obtain the indulgences granted by many bishops. Const. Peter Quivil, Exon. A.D. 1287, in Wilkins II. 131.

(175). Concil. Winton. A.D. 1071, Can. 10 : That bells be not tolled at celebrating in the time of the secret.

(176). Ordo of ninth century, ap. Duchêsne, p. 445, v. 177.

(177). Referred to by Chrysostom in Hom. in 1 Cor. The use of this hymn was introduced at Rome by Sergius III. (687-701). It is mentioned in Can. 37, Elfric, A.D. 957 : While they are going to Housel on Easter Eve

seventh century it has become the general rule in the West for each presbyter to make a ceremonial fraction into three parts only (178). The Western rule also forbids the priest to communicate himself until the blessing has been given to the people (179), or to kiss the consecrated Elements (180).

14. In the second and third centuries (181) it was usual to commence the Eucharistic service or at least the preparatory

let them not say the Agnus and the Communia [Ps. 33] but let them sing Laudate Dominum [Ps. 147].

(178). Sergius, A.D. 687, ap. Gratian III. Dist. II. c. 22 : One part dipped in the cup signifying the risen Body of Christ : the part consumed by the priest signifying Christ walking about on earth ; the part reserved signifying Christ's Body resting in the tomb. The Greeks now divide into four parts. The Spanish Church divided into nine, of which seven were placed in the form of a cross and the two remaining ones called Regnum and Gloria served for the commixture and the consumption of the priest respectively. Bona Tom. III, 328, Maskell 159. At an earlier time the division had been into many parts, which by some priests were laid out to represent a body, but Concil. Turon. II. A.D. 567, Can. 3, prohibited this practice : Ut Corpus Domini in altari non in imaginario ordine sed sub crucis titulo componatur, and also Pelagius, A.D. 558, ap. Jaffé 978, in a letter to the bishop of Arles. Duchêsne 210. In Ireland the fraction was made in seven different ways, according to the degree of the feast, varying from five parts on ordinary days to sixty-five on Ascension Day. Stokes' Stowe Missal, p. 10.

(179). Innocent I. ap. Gratian III. Dist. II. c. 9, says, the peace ought not to be given until the mysteries are concluded, *i. e.* after the consecration and before the communion. Concil. Tolet. IV. A.D. 633, Can. 18, says some communicate immediately after the Lord's Prayer [which concluded the consecration] and afterwards give the blessing to the people, but enjoins the blessing to be given after the Particle has been placed in the cup. In this country the bishop's solemn benediction was given after the commixture and followed by the peace as late as 1309 in Wilkins II. 304. The solemn benediction might not be given by a presbyter. Concil. Agath. A.D. 506, Can. 44.

(180). Const. 32. Edmund, A.D. 1236, in Wilkins I. 639, says "before he gives the consecrated Host to himself." For this Lynd. 234, reads "before he gives the peace." Kissing the Host was a French practice followed as late as the sixteenth century. Elsewhere the priest kissed the corporal or the cup. At Rome he kissed the altar.

(181). John XX. 19 ; Luke XXIV. 29, 30 ; Math. XXVIII. 1 ; Acts XX. 7, says on the first of the two sabbaths at even, *i. e.* Saturday evening. Pliny X. 96, writing in A.D. 112, says that Christians meet together before day-break on the appointed day and antiphonally chant a hymn to Christ as God and bind themselves with an oath (sacramento) not to commit crime,

part of it called nocturns, or the vigil-prayers ([182]) and in later times the catechumens' service, directly Sunday commenced, *i. e.* immediately after sunset on Saturday, and to complete the offering and give the communion to the faithful after midnight in memory of the Lord's resurrection ([183]). In the fifth century

after which going away, they reassemble to partake in common of harmless food. Bona I. 1, § c. 4, Duchêsne 219, Batiffol Hist. du Bréviaire 2, take the second meeting to be the Eucharist proper. Lightfoot, Ignatian Epistles, 52, holds the first meeting to be the Eucharist, and the second to be the agape. Freeman II. 372, states that herein the Jewish practice of the memorial bread and wine on the eve preceding the sabbath was followed. Euseb. VI. 34, says that the emperor Philip wished to share with the multitude in the prayers of the Church on the last vigil of the Passover, but was not allowed. Apost. Const. VIII. 35 : When it is evening thou O bishop shalt assemble the Church, and after the repetition of the psalm at the lighting up of the lights, the deacon shall bid prayers for the catechumens, the energumens, the illuminated and the penitents. But after the dismissal of these the deacon shall say, etc. . . Augustin. Epist. 36 ; Socrates v. 22 : In Achaia and Thessaly and also at Jerusalem they go to prayers as soon as the candles are lighted, in the same manner as the Novatians do at Constantinople . . . The Egyptians in the neighbourhood of Alexandria . . . hold their religious meetings on the sabbath [Saturday], but do not participate in the mysteries in the manner usual among Christians ; for after having eaten and satisfied themselves with food of all kinds in the evening making their oblations, they partake of the mysteries. Cap. 24, Theodulf, A.D. 994 : It behoves every Christian that can to come to Church on Saturday, and there hear evensong and nocturns in their proper hour, and come in the morning with an offering to high mass.

(182). Tertullian Apol. c. 39, says service began with prayer. Then followed the agape. The night vigil was kept by (1) ablution and (2) the bringing in of the lights ; (3) each one sang a psalm or a hymn and (4) prayer concluded. *Id.* ad Uxor. II. 4, calls these *nocturnae convocationes* Sidonius Epist. CVII. 9 : Before daybreak we repaired to the tomb to celebrate the anniversary of the martyr . . . . First the vigils were kept. The vigils over we all went forth to stretch our limbs, not however going far ; for we had to meet again at the third hour for the solemn consecration.

(183). Cyprian Ep. 62, 16 : We celebrate the resurrection of the Lord in the morning. Tertullian De Cor. 3 : We take in meetings before daybreak the sacrament of the Eucharist. Cyprian Ep. 62 (Oxf. 63), 15, speaks of "the morning sacrifices." Hieronym. in Math. XXV. : Whence has endured the apostolic tradition that on the vigil of Easter it is not lawful to dismiss the people before midnight, awaiting the Lord's return.

the alternative course was approved of commencing the prayers as well as communicating the people after midnight (184). The regular hours then sanctioned for the solemn oblation were on Sundays the third hour, because at that hour Christ was crucified and the descent of the Holy Ghost took place (185), on ordinary days the sixth hour (186), on fast days the ninth hour (187). The practice still continued of commencing the service directly after sunset on Saturday at the embertides (188), and at the ordination

(184). Leo, A.D. 446, ap. Gratian, 1 Dist. LXXV. c. 4, after saying that the beginning of the night should be chosen for the ordination Eucharist, which dawns upon the first day of the week continues: It will be a like observance of this rule if the ordination Eucharist is celebrated on Sunday morning, there being no difference between this time and the beginning of the night preceding, since without doubt the night preceding is part of Sunday.

(185). Concil. Aurel. III. A.D. 538, Can. 14, ap. Labbé, v. 299, orders that on festivals mass should not begin later than the third hour, so that all may meet again for vespers. Baeda II. 22, A.D. 734: Tertia hora quando missæ fieri solebant. Pseudo-Telesphorus ap. Gratian III. Dist. I. c. 48, and Lynd. 236, state the reason. Augustin, *Ibid.* III. Dist. I. c. 52. Elfric's Colloquy. Walafrid Strabo. John of Rouen, A.D. 1070, in Bridgett I. 188: Mass according to ancient prescription is said at the third hour, for at that hour Christ was crucified by the tongues of the Jews, but according to daily custom at the sixth hour, for in that He suffered at the hands of the executioners; on fast days at the ninth hour, for then He gave up His soul.

(186). Thus it is related of Egbert, A.D. 750, in Lingard's Anglo Saxon Church, I. 98, that: Sitting on his couch he taught young clerks till noon when he retired to his chapel and offered the Body and Blood of Christ for all. Devoti Inst. Lib. II. Tit. II. § 59.

(187). Theodori Poenit. II. VIII. 5, in H. & S. III. 197, mentions mass at nones on Christmas-Eve. Gratian III. Dist. I. c. 50: Concil. Brac. II. A.D. 572, Can. 9, says at the ninth or tenth hour. Can. 39, Theodulf, A.D. 994: In fast-tides let a man after noonsong [*i. e.* 3 p.m.] hear mass, and after mass his evensong . . . If any one cannot come to mass and evensong let him continue fasting till he know that mass and evensong are ended. On Maunday Thursday evening mass is enjoined by Concil. Carthag. III. A.D. 397, ap. Gratian III. Dist. I. c. 49. In Leo's condemnation of the Priscillianists, No. 16, in Concil. Brac. A.D. 561: If any one on Maunday Thursday at the lawful hour after nones does not say mass let him be anathema.

(188). Leo ap. Gratian I. Dist. LXXV. c. 4, and Dist. LXXVI. c. 12.

on Easter-eve (189), until these eve-services became day-services by anticipation, but the Roman Church still retains the midnight Eucharist on Christmas Eve (190). Matins, which have succeeded to the place of the preparation-prayers, should always be said before the Eucharistic oblation is made (191), and terce also where the obligation exists to say that office (192).

15. In the first days of the Church, the Eucharist was solemnly celebrated at Jerusalem daily (193). After the dispersion of the apostles, the solemn celebration appears to have been ordinarily confined to Sundays (194). On the cessation of persecution some churches followed the example of that of Jerusalem, and had a daily Eucharist (195). Others celebrated the Eucharist only on Sundays and the anniversaries of martyrs. In the East, Saturday was also everywhere kept as a liturgical day (196), and in some places the two station-days, Wednesdays and Fridays (197). A daily Eucharist became the Roman custom

(189). Giraldus in Gemma Eccles. p. 24, A.D. 1190: In sabbato magno circa noctis initium.

(190). Pseudo-Telesphorus ap. Gratian III. Dist. I. c. 48: In the night of the Lord's Nativity priests celebrate masses and sing at them the angelic hymn, because in the same night He was announced by angels to shepherds. . . . At other times masses must never take place before the third hour, because at the same hour our Lord was crucified, and the Spirit was poured forth on the apostles. Cap. 45 Theodulf, A.D. 994.

(191). Lynd. 236.

(192). Elfric's Colloquy, A.D. 990: Afterwards we sang prime and the seven psalms and the first mass, then terce, and we performed the mass of the day. Const. 5, Reynolds, A.D. 1322.

(193). Acts II. 42, 46.

(194). Acts XX. 7 (Conf. XIII. 2). Justin 1 Apol. c. 66.

(195). Cyprian Ep. 53 (Oxf. 57) 3: We who daily celebrate the sacrifices of God. Augustin De Civ. Dei X. 20; Ep. 54 ad Januar.: In some places no day passes without the offering being made to God, in others it is made on the Sabbath and Sunday, in others again on the Lord's day only. Chrysostom, Hom. 51 ad pop. Antioch, speaks of a daily Eucharist at Constantinople. Ambros. Ep. 14 ad Marcell.: For whom I daily renew the sacrifice, implies a daily Eucharist. *Id.* in 1 Tim. c. 3, advises outdwellers to offer every week, indwellers (*incolae*) to offer twice a week.

(196). Socrates v. 22.

(197). Basil Epist. 289 ad Cæsar. commends those who communicated

in the eighth century (198), the practice being generally followed in the monastic and collegiate churches of the West. In lesser Churches the rule of the thirteenth century requires every priest having a cure of souls, and not being hindered by a canonical excuse (199) to celebrate the Eucharist at least once a week (200), but not to do so more than once on the same day (201), except at Christmas (202) or in case of necessity (203), and by the custom of England at Easter (204); under no circumstances more than thrice (205), and not at all on Good

daily, and states that in his Church the practice was to offer four days a week besides on the anniversaries of martyrs. Duchêsne, p. 222.

(198). In the time of Gregory II. See Duchêsne and Batiffol, Histoire du Bréviaire. Duchêsne, 222, observes that originally at Rome there was a solemn celebration of the liturgy only on Sundays, and other assemblies on Wednesdays and Fridays, but the latter were aliturgical before the fifth century. Liturgical assemblies on Monday and Tuesday were added after the time of Pope Leo (A.D. 440–461), at first during Lent and then at other seasons (p. 224). Ultimately a liturgical assembly was added on Thursday also by Gregory II. (A.D. 715–731) (p. 236, note).

(199). Such as an unconfessed mortal sin. Const. 2 Edmund, A.D. 1236. Const. 5 and 9 Reynolds, A.D. 1322; Concil. Westminster, A.D. 1200, Can. 4: Let no priest presume to celebrate after a lapse till he has confessed.

(200). Justin 1 Apol. 67: Sunday is the day on which we all hold our common assembly. Const. 1, Peckham, A.D. 1281; Theodori Pœnit. I. XII. 1, 2, in H. & S. III. 186; Gemma Eccl. Dist. II. c. 24. The Carthusians celebrated only on feast and profeast days.

(201). Gratian III. Dist. I. c. 53; Egbert's Excerpt, 54, A.D. 940: It is sufficient for a priest to celebrate one mass a day, because Christ once suffered and redeemed the world once; and it is written [Lev. XVI. 1, 2] that Aaron ought not to go assiduously into the holy place. Lynd. 277.

(202). Const. 7 Langton, A.D. 1222; Innocent III. to Bishop of Worcester in Decret. Lib. III. Tit. XLI. c. 3. Lynd. 227.

(203). Innocent III. l. c. Concil. Westminster, A.D. 1200, Can. 2; Const. 3, Langham, A.D. 1367. Necessity, says Lynd. 227, extends to the cases covered by the following lines—

> Una dies Missam tantum expostulat unam.
> Excipitur certe Defunctus cum Peregrino,
> Infirmus commeans, Domini Natalis, et Hospes,
> Et Mulier nubens cum tempus labitur illi.

(204). Const. 7 Langton, A.D. 1222. Lynd. 227.

(205). Edgar's Law 37, A.D. 960.

Friday ([206]). If through accident or carelessness ([207]) any of the consecrated Elements fall to the ground ([208]), he should consume what is spilt, scrape the spot and do penance, which he is also enjoined to do if, through his own fault or for any other cause, he is afterwards unwell ([209]). After the communion he is directed to purify the chalice and his fingers with wine ([210]), and to consume the ablutions, postponing, nevertheless, the consumption if he has a second Eucharist in prospect ([211]), and then to cleanse all the vessels thoroughly in water ([212]).

16. The Eucharist may be celebrated either solemnly or non-solemnly. The solemn celebration was anciently called synaxis, collecta, or the general assembly, the public solemnity of prayer ([213]), or the canonical office ([214]). In it all the faithful

(206). Can. 37 Elfric, A.D. 957. The Eastern Church does not allow the Eucharist to be consecrated during Lent, except on Saturdays and Sundays. On other days communion is given with the Presanctified. Concil. Laodic. A.D. 363, Can. 49 ; Concil. Mell. A.D. 692, Can. 52.

(207). Augustin ap. Gratian Caus. 1. Qu. I. c. 99 : How great is the care we take when the Body of Christ is ministered to us that no part of it falls to the ground ! *Ibid.* III. Dist. II. c. 94, prescribes the penances.

(208). Theodori Poenit. ap. Gratian III. Dist. II. c. 27 : If a drop fall to the ground, the priest should lick it up and scrape the floor. If there be no floor, then scrape the ground and burn the scrapings, the priest doing penance for forty days. If the drop be spilt on the altar, he should lick it up, and do penance three days. If it soak through the corporal to the first linen cloth, for four days. If it soak through to the second, for nine days. If it reach the altar-cloth, for twenty days. The cloths themselves should then be rinsed in three changes of water, which should be poured away by the side of the altar. Baedae Poenit. VIII. 2 in H. & S. III. 332.

(209). Baedae Poenit. ap. Gratian III. Dist. II. c. 28, orders a layman to do penance for forty days, a clerk, monk, deacon, or priest for seventy days, and a bishop for ninety days, who vomits after receiving the Eucharist through drunkenness, but only for seven days if it were the result of weakness. Baedae Poenit. VI. l. c. p. 331.

(210). Innocent III., A.D. 204, ap. Decret. Lib. III. Tit. XLI. c. 5. Lynd. 235.

(211). Innocent III. l. c.

(212). Const. 32 Edmund, A.D. 1236. These rinsings were not consumed.

(213). Gratian III. Dist. I. c. 52 : Publica missarum solemnia. Concil. Vas. II. A.D. 529, Can. 3, publicae missae.

(214). Const. 2 Peckham, A.D. 1281 : Let not priests disable themselves

took part as offerers (215); the deacon conducted the ceremonial of the worship; the union of the Church of to-day with the Church of bygone times was kept up by the ceremony of the *Sancta* (216), and the whole body of presbyters joined with their head in consecrating the offering (217). When offered by the bishop of the see together with his clergy, it is termed a solemn pontifical Eucharist; when offered by the archpresbyter of a collegiate or conventual Church, a solemn or conventual Eucharist. A non-solemn Eucharist is one in which a single priest is the celebrant (218). When offered as the canonical office quasi-solemnly by a priest assisted by a deacon and subdeacon, it is termed a principal or greater Eucharist (219); when offered by a single priest alone, a private Eucharist.

17. Originally only one Eucharist was celebrated in a day (220), and that was solemnly celebrated. Before the middle of the fifth century a repetition of the offering had become the

from discharging their canonical office, by obliging themselves to celebrate special masses.

(215). Clem. 1 Cor. c. 41 : Let each one take part in the thanksgiving (εὐχαριστείτω) according to his own order. Bona Lit. I. c. 13 : Solemn mass, now called conventual, *canonical*, capitular, principal, or greater, is one conducted with music, and the solemn apparatus of ceremonies, ministers, and assistants to the clergy, each exercising the functions of his order together with, in ancient times, the whole body of the people offering and communicating. Guerricus Abbas. Serm. 5 de Purificat. in Ep. Bernardi IV. 1896 : The priest does not sacrifice alone, or consecrate alone, but the whole assembly of the faithful who are present consecrate with him, and offer with him.

(216). The ceremony of the *Sancta* consisted in using for the commixture a portion of the consecrated Loaf reserved from the previous solemn mass. The *fermentum* was similar, and consisted in using for the commixture at a private mass, a portion of the Loaf consecrated by the bishop. See Lib. Pont. Vita Melchiadis. Le Brun III. 189.

(217). See Reichel's Solemn Mass at Rome in the ninth century. Hodges, 1894.

(218). In a public Eucharist the priest says the Gloria in Excelsis, which, before the tenth century, he was only allowed to say on Easter Day ; he also says many prayers which are properly his private devotion.

(219). Bona I. 13, quoted above.

(220). Ignat. Phil. c. 5 : Be zealous to frequent one Eucharist.

custom at Rome on high festivals, to afford all the opportunity of worship (221), and at other seasons the service of consecration was allowed to be repeated by individual presbyters at separate altars for the same object. Such consecrations were distinguished into (1) special (222), (2) votive, or (3) private (223); special when they followed a course of prayer different from the solemn Eucharist, such as a consecration in honour of the Trinity, or of the Holy Ghost, at another time than its own proper season; votive when they were offered by request for some public or private object (224), such as a requiem for the dead; private when they were conducted by a

(221). Leo Epist. II. (al. 81) to Dioscorus, A.D. 445, ap. Gratian III. Dist. I. c. 51. Whenever a more solemn festivity brings together a larger concourse of people, let the offering of the sacrifice be unhesitatingly repeated, . . . so that as oft as the Church in which the service of the day is performed (in quâ agitur) is filled by a fresh congregation, so often another sacrifice may be offered. For some part of the people must needs be deprived of worship if the custom of offering only one mass is adhered to, whereby none can [worship] except those who assemble in the first part of the day. We, therefore, urgently and familiarly entreat you, beloved, that what has rooted itself in our practice from the form of paternal tradition, you also may be careful not to neglect. Honorius III. in Decret. Lib. III. Tit. XCI. c. 11, orders two celebrations in every collegiate church, one for the dead and one for the living.

(222). Pseudo-Augustin ap. Gratian III. Dist. I. c. 52: Care must be taken that special masses (peculiares missas), which are said by priests on solemn days, are not said so publicly, that by them the people are drawn off from the solemn public masses which take place canonically at the third hour. Concil. Seligenstadt, A.D. 1022, in Decret. Lib. III. Tit. XLI. c. 2. Some laymen have a practice of hearing the gospel *In the beginning*, and then attending special masses (peculiares missas) of the Holy Trinity and St. Michael. The Council forbids this for the future. . . . But if they wish to hear such masses, let them on the same day hear masses for the living and the dead [*i.e.*, solemn or public masses].

(223). Bona I. 13; Duchêsne 153, divides all masses into two classes—(1) solemn and stational, (2) special and private.

(224). Const. 5 Winchelsea, A.D. 1305, calls masses for the dead "missae requestae." Concil. Tolet. XVII., A.D. 694, Can. 5, ap. Gratian, Caus. XXVI. Qu. V. c. 13, censures priests who announce a mass for the dead, and then, by a deceitful wish (fallaci voto), offer for one who is alive, in order to expose him to peril.

single presbyter (225) in accordance with the regular course of prayer, but at a different place and hour from the solemn or public Eucharist. Consecrations in all non-collegiate Churches were at first private observances, but when these were elevated to the rank of cures of souls the parochial Eucharist became public, and whenever practicable was celebrated quasi-solemnly.

18. Votive Eucharists are by mediæval rule allowed to be offered quasi-solemnly, *i.e.*, with the assistance of a deacon and subdeacon, whenever the object for which they are offered is of a public character, such as a thanksgiving for deliverance from foes, a requiem for a public person, or a supplication on behalf of a sovereign (226); but they ought not to be offered on festivals or fast-days of the highest degree, such as principal doubles, principal Sundays, Ash Wednesday, the week before Easter, or the vigils of Pentecost and Christmas (227). Votive Eucharists for private objects are allowed in any case of necessity (228), such as a visit from the bishop or founder of a church (229), the celebration of nuptials and espousals, the request of a sick person, and the burial or the anniversary of the dead (230).

19. Special Eucharists are by ancient rule forbidden on solemn days, until the canonical office is concluded (231). Nuptial celebrations are not allowed on Sundays, on principal or greater doubles, nor at the forbidden seasons without a dis-

(225). Walafrid Strabo, A.D. 849, c. 22: Although when a priest offers alone, those for whom he offers are co-operators in the same consecration (actio), whom the priest also represents in certain answers, yet there is no lawful mass without a priest, a responder, an offerer, and a communicant. Micrologus, A.D. 1077, c. 2, in Migne CLI. 979, says the same. See note 78.

(226). Craisson, § 3749.

(227). *Ibid.* § 3721.

(228). Innocent III. to Bishop of Worcester, in Decret. Lib. III. Tit. XLI. c. 3. Lynd. 227 mentions the cases.

(229). Boniface VIII. in Sext. Lib. v. Tit. VII. c. 12.

(230). Tertullian Exhort. ad Cast. c. 11, and Monog. c. 10, speaks of anniversary oblations. Concil. Vas. II. A.D. 529, Can. 3, required the Ter Sanctus to be said at them as well as at the public masses.

(231). See above, note 223.

pensation. Funeral celebrations are forbidden on principal doubles, on the commemoration Sunday after the Epiphany, the dedication feast, the feast of the title, and in the three last days of the week before Easter (232). And since all votive Eucharists are tolerated rather than enjoined services, neither the reserved Eucharist may be dispensed at a funeral celebration (233), nor the Eucharist consecrated at a votice service reserved for the use of the sick.

### The Eucharist as a Sacrificial Communion.

20. The Eucharist being not only a sacramental oblation commemorative of Christ's one offering of Himself, and profitable for all as such, but also a sacrificial communion sanctifying those who partake thereof (234), every solemn celebration is regarded as the corporate act of the whole Church, at which the whole court of heaven assist (235), and in which three dis-

(232). Craisson, § 3724.

(233). Congregation of Rites, A.D. 1741, in Craisson, § 3396 ruled: In missis defunctorum non ministratur Eucharistia per modum sacramenti scilicet cum particulis praeconsecratis extrahendo pixidem a custodia. Potest tamen ministrari per modum sacrificii prout est quando fidelibus praebetur communio cum Particulis infra eandem missam consecratis. On 27th June 1868, Congregation of Rites reversed this decision.

(234). Const. I, Peckham, A.D. 1281: The sacrament of our Lord's Body is a sacrament, and a sacrifice of a sacrament, sanctifying those who eat thereof; and a sacrifice which, by its oblation, is profitable for all on whose behalf it is made, the living as the dead.

(235). Gregorii Dialog. IV. 58: For which of the faithful can hold it doubtful that at the very hour of the sacrifice, at the priest's voice, the heavens are opened; that at that mystery of Jesus Christ the choirs of angels are present; lowest things are associated with the highest; earthly things with those of heaven? Baeda Hom. p. 428: Where the mysteries of the Body and Blood are rendered there is the gathering of the heavenly citizens. Cap. 10 Theodulf. A.D. 994: No doubt the presence of God's angels is there, and He Himself full near. Cnut's Law 4, A.D. 1017: As oft as the priest consecrates the Housel, angels glide about the place and guard those holy actions, and assist the priest with a divine power. Const. 5 Reynolds, A.D. 1322. The whole court of heaven is undoubtedly present at the sacrament when it is consecrating, and after it is

tinct classes of persons are interested, viz., (1) the faithful present who themselves offer; (2) the faithful departed for whom an offering is made, and (3) the faithful prevented from being present by sickness, and all other Christians everywhere, including those who yet shall be to the end of time (236). Of a private celebration this is only in so far true as it is an integral part detached from the solemn celebration, but every solemn celebration is a continuing representation of Christ's one offering made once for all (237) in which all are interested.

21. Every Christian not having a reasonable excuse (238) is

consecrated. Devoti Inst. Lib. II. Tit. II. § 66. Comp. Rev. I. 13; IV. 2, 3; V. 6, 8; VI. 9.

(236). Rev. XII. 22: Ye are come to Mount Zion . . . to an innumerable company of angels, to the general assembly and church of the first-born. 1 Cor. XV. 18. The Church of Smyrna's account of Polycarp's martyrdom, A.D. 177, in Euseb. IV. 15: After Polycarp had ended praying, and had in this remembered all that had ever been connected with him, and the whole Catholic Church throughout the world, &c. Origen contra Celsum VIII. 4; Apost. Const. VI. 30, directs singing to be made for all the martyrs and for all the saints from the beginning of the world; VIII. 12, directs intercessions after the prayer of consecration "for the whole Church and for all the saints." Chrysost. Hom. 24 in Math.: The priest bids us make the Eucharistic offering on behalf of the world, of those who have gone before, and of those who are to follow after us." Blickling Homilies, Early English Text Society: The bishop and the priest, if they will rightly serve God . . . must at least once a week sing mass for all Christian people, and for all who have been born from the beginning of the world. . . . And those that are in heaven shall intercede for those who are engaged in the song. And they shall be in the prayer of all earthly folk who have been Christians, or yet may be. See note 45.

(237). Ambros. ap. Gratian III. Dist. II. c. 53: In Christ the victim has been offered once for all, availing to everlasting salvation. But what of ourselves? Do not we offer every day? We do offer, but in remembrance of His death; and the offering is one, not many. How is it one and not many? Because Christ was once offered. But this sacrifice is a representation of that—the same, and ever the same; therefore there is but one sacrifice. Otherwise, seeing it is offered in many places, would there not be many Christs? By no means, but everywhere there is One Christ, here existing in His fulness and there in His fulness. Const. 2, Peckham, A.D. 1281.

(238). Concil. Ensham, A.D. 1009, Can. 20: When he is willing to know

required (1) to participate in the solemn or public celebration (for which ordinarily a private celebration is no substitute) by being present at it every Sunday and high day (239), dressed, not in martial costume (240) but in the best clothes he can command (241), and continuing present until the Lord's Prayer and the Blessing before the communion have been given (242); (2) to communicate, unless he is under disability or is excluded by censure (243); and (3), to take part in the sacrifice by making

his duty. Const. 4, Sudbury, A.D. 1378: Unless he thinks he ought to abstain by the advice of the priest.

(239). Concil. Rothomag. A.D. 650, Can. 14, requires yeomen to cause their foggers (bubulcos) and swineherds to come to Church on Sundays and other festivals; Can. 15 directs them to come to vespers the previous day and to keep vigils. Likewise Can. 35 Elfric, A.D. 957; Can. 24 Theodulf, A.D. 994, permits a man to travel on Sunday provided he has heard mass. Const. 3 Islep, A.D. 1362: Let them reverently go to the parish churches on Sundays and high days, and stay out the conclusion of the masses and other divine offices.

(240). Concil. Aurel. III. A.D. 538, Can. 29.

(241). Chrysostom, Hom. III. in Epist. ad Ephes.; Augustin. Serm. XVII. 6, say wearing best clothes.

(242). Stat. Eccl. Anti. A.D. 505, Can. 24 ap. Gratian III. Dist. I. c. 63: Whilst the priest is preaching in Church, let any one who leaves the auditory be excommunicated. Concil. Agath., A.D. 506, Can. 47, *Ibid.* c. 64: We enjoin that men attend the mass throughout on the Lord's day, so that the people do not leave before the bishop's blessing. Concil. Aurel. I. Can. 28, A.D. 511: Let not the people leave Church before the solemnity of mass is over. Concil. Narbon, A.D. 589, Can. 12, forbids any of the clergy to leave the altar. Egbert's Excerpt, 84, A.D. 740; Concil. Aurel. III. A.D. 538, Can. 29: Let no layman depart before the Lord's Prayer has been said; and if the bishop be present, let his blessing be expected. Concil. Lat. IV. A.D. 1215, in Decret. Lib. III. Tit. XLI. c. 9, speaks of those who do not communicate, and what is worse, are not even present. Stephen's Eccl. Stat. 367.

(243). Apost. Can. 10, ap. Gratian III. Dist. I. c. 62: All those of the faithful that enter [Church] and hear the sacred mysteries, but do not stay during prayer and holy communion, must be suspended as causing disorder in the Church. Concil. Antioch, A.D. 341, Can. 2, and Concil. Martini, A.D. 572. *Ibid.* III. Dist. II. c. 18; Concil. Tolet. I., A.D. 400, Can. 13; *Ibid.* c. 20: Those who come to Church and are found never to communicate should be warned. If they do not then communicate, let them

an offering, unless he is undergoing penance (244). Originally each one received his own share of the hallowed Offering (245), which he partook of standing (246), and was permitted to carry away for private communion (247). Daily Eucharists appear then to have been rare, and were exceptional as late as the sixth century (248). In the fourth century the carrying away

come to penance. Pseudo-Isidor, *Ibid.* c. 10, Cap. 41, Theodulf, A.D. 994 : Men ought to go to Housel every Sunday in Lent, also on Thursday and Friday before Easter, and on Easter day.

(244). Concil. Carthag. v. A.D. 401, Can. 10, directs a bishop who fails to attend synod when summoned to be content with the communion of his Church [*i.e.*, to be excluded from making the offering]. Theodori. Poenit. I. XIV. I. l. c. III. 187, says married people, after penance, Communicant cum oblatione. *Id.* I. XII. speaks of De communione vel Sacrificio, but *Id.* I. V. 10, *Ibid.* 181 : The synod says of such [penitents] that in the tenth year they may receive the communion or oblation [but not make it, because, until the twelfth year, they were to be extra communionem in the sense of Sacrificium]. Petrus Damiani c. VIII. in Maskell, p. 127 : In the words of the canon, Qui tibi offerunt, it is plainly shown that that sacrifice of praise is offered by all the faithful, women as well as men. . . . By the words Hanc oblationem, &c., it is clearer than daylight that the sacrifice which is placed by the priest on the holy altar is offered by the whole family of God.

(245). Justin 1, Apol. c. 67 ; Augustin ap. Gratian III. Dist. II. c. 58 : Unusquisque accipit partem suam. *Ibid.* c. 70, Hieronym. ; *Ibid.* c. 77.

(246). Apost. Const. II. 57 : After this let the Sacrifice follow, the people standing. Cyril. Catech. 123, no. 22 implies that the Eucharist was received standing. Bona Rer. Lit. 217, § 8, points out that at solemn mass it is still the rule for the deacon to communicate standing.

(247). Acts XX. 7, speaks of the first day of the week as the day of meeting, and Acts II. 42, 46, of a daily *breaking* of the Bread. Tertullian de Orat. c. 19 : When the Lord's Body has been received and reserved. Ad Uxor. II. c. 5 : Your husband will not know what you secretly partake of before all food. Cyprian de Laps. c. 26, speaks of a woman trying with unworthy hand to open her box in which was the holy Body of the Lord ; Socrates II. 43, relates that Bishop Eustathius of Sebaste, A.D. 359, persuaded those who did not like to assemble in Church to communicate at home. The ninth century Ordo ap. Duchêsne 460, states that every priest at his ordination receives from the pontiff a whole consecrated Ubble (firmatam Oblatam) with which he communicates himself for forty days.

(248). Gregory Dial. IV. c. 56, speaks of a daily Eucharist as being unusual in his time. Pseudo-Ambrose, Lib. V. c. 4, De Sacramentis Op. II.

was forbidden, unless persecution were imminent (249); those, however, who did not communicate for three Sundays were excommunicated in the East, and in the West were warned (250).

22. The fulfilment of certain conditions being necessary before communion, the obligation to communicate was reduced in the ninth century to a minimum of thrice a year (251), viz., at Easter, at Pentecost, and at Christmas (252), the Easter com-

378: Receive daily that which may daily profit thee. Gennadius ap. Augustin VIII. App. 78: The receiving the communion of the Eucharist daily I neither praise nor blame. Yet I exhort persons to communicate on all Lord's days, provided the mind be not in a disposition to sin. Pseudo-Isidor. ap. Gratian, *Ibid.* c. 10.

(249). Basil Epist. 289, refers the practice to the days of persecution. Ambros. De obit. fratris. Concil. Caesaraugust, A.D. 381, Can. 3: If any one is proved not to have partaken of the Eucharist received in Church, let him be for ever accursed. Concil. Tolet., A.D. 400, Can. 14: If any one does not consume the Eucharist, let him be treated as one guilty of sacrilege. Hieronym. Epist. 48, ad Pammechium c. 15, Thiel Ep. Rom. Pont. n. 908, relates that Bishop Dositheus of Thessalonica, in 519, fearing an outbreak of persecution, dealt out the Eucharist in large basketsful to his flock.

(250). Concil. Elib. A.D. 305, Can. 21: If any one living in the town does not come to Church for three Sundays, let him be excommunicated for a short time that he may be seen to be rebuked. Theodori Poenit. I. XII. I. in H. and S. III. 186: The Greeks communicate every Sunday, both clergy and layfolk. Those who do not communicate for three Sundays are excommunicated. The Romans likewise communicate such as choose, but those who do not choose are not excommunicated. Concil. Tolet. I. A.D. 400, Can. 13, quoted above, note 243.

(251). Concil. Turon. III. A.D. 813, Can. 50 ap. Gratian III. Dist. II. c. 16: If not more often, at least thrice a year, let all laymen communicate, unless perchance one be hindered by crimes of any kind. Concil. Ensham, A.D. 1009, Can. 20: Let him prepare himself to go to Housel thrice a year at least. Cnut's Law 19, A.D. 1017. This appears to have been the Scotch practice, introduced by the northern missionaries. Baeda Ep. ad Egbert in Op. Min. 222, protests against it. Concil. Clovesho, A.D. 747, Can. 23, exhorts men to communicate often.

(252). Concil. Agath., A.D. 506, Can. 18, ap. Gratian III. Dist. II. c. 19: Let not seculars who have failed to communicate at Christmas, Easter, or Pentecost, be believed to be Catholics, nor be counted among them. Egbert's Excerpt. 38, A.D. 740, Const. 4, Sudbury, A.D. 1378.

munion being imperative, and no excuse allowed (253). Penitents were temporarily reconciled on Maundy Thursday to enable them to fulfil the obligation (254). Infants were communicated after baptism for eight days (255), and then were not afterwards communicated until they were seven years old. The young were, however, admonished to communicate often (256).

(253). Concil. Lat. IV. A.D. 1215, Can. 21 in Decret. Lib. v. Tit. XXXVIII. c. 12 : Reverently receiving at least at Easter the sacrament of the Eucharist. Const. 1 Peckham, A.D. 1281 ; Const. 4 Sudbury, A.D. 1378 : Whoever does not confess to his proper priest once in the year, at least, and receive the sacrament of the Eucharist at Easter, let him be forbidden entrance into the Church whilst alive, and be deprived of Christian burial when dead. Lynd. 8, 343.

(254). Concil. Cabil. II. A.D. 813, ap. Gratian III. Dist. II. c. 17 : On Maundy Thursday the perception of the Eucharist is neglected by some. But ecclesiastical usage shows that on that very day it should be received by all the faithful (except those to whom it is forbidden for grave crimes), since even penitents are on that day reconciled in order to receive the sacraments of the Body and Blood of Christ.

(255). Ordo S. Amandi ap. Duchêsne, p. 454, describes it as the custom in A.D. 800 to give the communion to infants when they were baptized, and for seven days afterwards. Paulinus Ep. 12, ad Sever. Egbert's Excerpt 41, A.D. 740 ; Raban. Maur. de Cler. Inst. I. 29. A Saxon constitution in Thorpe II. 392 : Ye shall housel children when they are baptized, and let them be carried to mass that they be houselled all the seven days that they are unwashed [*i.e.*, till the removal of the chrism cap. Theodori Poenit. II. III. 3 in Haddan & Stubbs III. 192]. Welsh laws in Haddan & Stubbs I. 273 : The bridan [solemn assertion] may be taken from a child of the age of seven, which shall go under the hand of the confessor. *Ibid.* 281 : At the end of seven years the child shall swear for his acts, for then he shall come under the hand of the confessor. Willibrord's Judicium Clementis, *Ibid.* III. 227 : If any communicate after breaking his fast, let him do penance seven days, but let children be whipped. Henry of Sisteron, A.D. 1250, in Bridgett II. 25 : Let priests admonish their parishioners to teach children, from the age of seven and upwards, the Lord's Prayer and the Creed ; and on Good Friday bring them to church to kiss the rood, and on Easter day to receive the Body of Christ, having previously confessed. Synod. A.D. 1255, in Martene I. IV. 10, directs that on Easter day the Eucharist be not given to children but only the Benediction bread. Devoti Lib. II. Tit. II. § 48.

(256). Concil. Clovesho, A.D. 747, Can. 23.

Clerical monks were enjoined to communicate monthly (257) and lay brethren eight times a year (258).

23. The conditions imposed on would-be communicants (259) are, (1) that they have been baptized (260), and either have been or are not unwilling to be confirmed (261); (2) that they are not canonically disqualified by being excommunicate or penitents (262), unless they are at the point of death (263); or by being strangers (264), unless they are *bonâ fide* travel-

(257). Concil. Vien., A.D. 1311, in Clem. Lib. III. Tit. X. c. 1, § 2. Constitution of Benedict XII. for Benedictines, A.D. 1337, in Wilkins II. 610. The practice of monthly communions may have originated with the monthly rogation formerly observed in many places.

(258). Viz., Christmas, the Purification, Ascension, Nativity of the Virgin, Maundy Thursday and Easter, Pentecost, All Saints. Bridgett II. 170. Ancren Riwle, p. 16 (Camden Society), forbids anchorites to communicate oftener than fifteen times a year.

(259). Justin 1 Apol. 66, enumerates (1) believing that the things which we teach are true; (2) having been baptized; and (3) so living as Christ has enjoined. Hippolytus IX. 7, mentions it as a crime on the part of Calixtus, that "he indiscriminately offered communion to all."

(260). Justin 1 Apol. c. 66; Lynd. 43.

(261). Concil. 4, Peckham, A.D. 1281; Lynd. 40.

(262). 1 Cor. XI. 27; Hilarius, A.D. 465, ap. Gratian III. Dist. II. c. 15: If sins are not so great as to deserve excommunication, one ought not to separate himself from the medicine of the Body and Blood of Christ. Cyprian de Orat. Dom. c. 18; Theodori Poenit. I. XII. 4, in H. & S. III. 186. Rabanus, A.D. 831, De Cler. Inst. Lib. I. 31: Some say the Eucharist should be received every day unless sin prevents, and they say well if they receive with devotion. But if the crimes are such as to remove the soul as of one dead from the altar, penance must be done first. Elfric's Hom. I. 266. Yet may not he who is polluted with deadly sins dare to partake of God's Housel unless he first atone for his sins. If he do otherwise he will partake to his injury.

(263). Concil. Nic. Can. 13, A.D. 325. Baedae Poenit., A.D. 730, III. 42, in H. & S. III. 329, orders monks and those who can to carry the Host about with them for this purpose to out-of-the-way places. Theodori Poenit. I IX. 7, *Ibid.* p. 185, forbids the viaticum to be refused to any. Gratian I. Dist. I. c. 63.

(264). Concil. Nic. Can. 16, Concil. Chalcedon, A.D. 451, Can. 11, Gratian Caus. XVI. Qu. I. c. 10; Decret. Lib. III. Tit. XXIX. c. 2; Const. 1, Peckham, A.D. 1281: Let no priest give the communion to the parishioners of another without his manifest leave. Ayliffe 475, Const. Giles of Sarum, A.D. 1256,

lers (265) or have letters of commendation (266); or women at certain periods (267); and (3) that they have prepared themselves by fasting (268), unless the bishop has dispensed therewith (269),

in Wilkins I. 704: No one may go to confession or communion out of his parish without permission.

(265). Decret. Lib. III. Tit. XXIX. c. 2; Const. 1, Peckham, A.D. 1281.

(266). Concil. Chalcedon, A.D. 451, Can. 11, mentions two kinds: (1) commendatory letters (*συστατικοί*), for those labouring under suspicion; and (2) pacific or communicatory (*εἰρηνικοί*), for those about to travel. Concil. Elib., A.D. 305, Can. 58, directs those who bring communicatory letters to be examined whether they have rightly proved their contents. Concil. Hertford, Can. 5, A.D. 673. See the letters commendatory of St. Boniface in H. & S. III. 302. Dialogue of Egbert Answ. IX. *Ibid.* 407; Concil. Hispal. II., A.D. 619, ap Gratian I. Dist. LXVIII. c. 4, forbids a rural bishop to give them.

(267). Theodori Poenit. I. XIV. 17, in H. & S. III. 188: Mulieres autem menstruo tempore non intrent in ecclesiam neque communicent, nec sanctimoniales nec laicae. Should they presume so to do, let them fast three weeks. According to Innocent III. in Decret. Lib. III. Tit. XLVII., this was not the Roman rule.

(268). Augustin ap. Gratian III. Dist. II. c. 54: It plainly appears that when the disciples first received the Body and Blood of Christ they did not receive them fasting. Is the universal Church therefore to be blamed because they are always received fasting? For it hath pleased the Holy Ghost that in honour of so great a Sacrament, the Lord's Body should enter a Christian's mouth before any other food. And so throughout the world the custom is observed. Concil. Autissiodor., A.D. 578, Can. 19: Neither priest, deacon, nor subdeacon may say mass nor stand in church whilst mass is being said who has partaken of food or drink. Theodori Poenit. II. 1, 2, l. c. p. 190: He who has first eaten let him not stay to the kiss of peace [with which the communion proper commenced]. Willibrord's Judicium Clementis in H. & S. III. 227; Lynd. 22. Modern practice requires not simply an empty stomach, which might be after three hours, but abstinence from food since midnight. Devoti Lib. II. Tit. II. § 49; Craisson § 3450, says that this is a purely human institution.

(269). Chrysos. 1 Hom. in 1 Cor. and Epist. 125 ad Cyriacum, whilst stating that he had never disobeyed this law of the Church, added that if he had disobeyed it he would only have followed our Lord's example. Theodori Poenit. I. XII. 5, A.D. 673, in H. & S. III. 187: If any one has received the Sacrifice after food let him do penance for seven days. It is in the bishop's discretion [to dispense]. The statement that it is in the bishop's discretion is not added by some. Edgar's Law 36, A.D. 960, says: Except it be on account of infirmity.

conjugal abstinence (270), confession (271), and the renunciation of forbidden modes of life (272). On all these points their own word is sufficient evidence (273).

24. In communicating the faithful, the bishop or presbyter is directed to give the Lord's Body, and the deacon to take and give the cup (274), with the prescribed form of words (275), first to the presbyters, then to the deacons, subdeacons, readers,

(270). Concil. Elib. A.D. 305, ap. Gratian III. Dist. II. c. 21 : Every man before the Holy Communion should abstain from his own wife for three days, or four, or eight. Augustin *Ibid.* Caus. XXXIII. Qu. IV. c. 2, says several days. Ambros. *Ibid.* c. 3 ; Hieronym., *Ibid.* c. 1 ; Theodori Poenit. I. XII. 3 in H. & S. III. 186 : The Greeks and Romans alike abstain from their wives for three days before the bread of presentation. [Concil. Araus. A.D. 441, Can. 17.] Edgar's Law 24, A.D. 966 ; Egbert's Excerpt c. 109, A.D. 740 : Let them who are married contain themselves for three nights before they communicate. Can. 43, Theodulf, A.D. 994.

(271). Concil. Clovesho, A.D. 747, Can. 22, Thorpe II. 440 : No one ought to receive it without his confessor's leave, to whom he shall previously have confessed. Cap. 44, Theodulf, A.D. 994 ; Can. 20, Ensham, A.D. 1009 ; Const. 1 Peckham, A.D. 1281 : Let parish priests beware that they give not the Lord's Body to any that have not evidence of having confessed. Const. Giles Sarum, A.D. 1256, in Wilkins I. 704 : Let no one presume to approach the Body of Christ on Easter Day, unless he has first confessed. Const. Marsh Dunel., A.D. 1220, *Ibid.* I. 571–582 : Let every man prove himself, cleansing and sanctifying himself by confessions.

(272). Such as being actors ; Cyprian Ep. 60, A.D. 256, ap. Gratian III. Dist. II. c. 95 ; Concil. Elib. A.D. 305, Can. 62 ; Concil. Carthag. III., A.D. 397, Can. 35 ; *Ibid.* c. 96 ; or chariot-racers, Concil. Arelat. I., A.D. 314, Can. 4 and 5 ; Concil. Arelat. II., A.D. 441, Can. 20. Lynd. 344.

(273). Const. 1 Peckham, A.D. 1281. Lynd. 233.

(274). Justin Martyr, 1 Apol. 67 ; Apost. Const. VIII. 28 ; Hieronym. ap. Gratian I. Dist. XCIII. c. 16 ; Concil. Westminster A.D. 1138, Can. 2 ; Concil. Ebor., A.D. 1195, Can. 6 ; Const. 1 Langton, A.D. 1223 ; Ayl. 475.

(275). Apost. Const. VIII. 13 : Let the bishop give the Oblation, saying, The Body of Christ, and let him that receiveth say, Amen. And let the deacon give the cup, and when he giveth it say, The Blood of Christ, the cup of life ; and let him that drinketh say, Amen. Concil. Rothomag., A.D. 650, Can. 2 : Let not the priest place the Eucharist in the hand of any layman or woman, but only in the mouth, saying, The Body and Blood of our Lord profit thee to the remission of sins and life everlasting. Bridgett I. 217, says this was the Roman practice after the 6th century. Devoti, § 51. Euseb. VI. 43, relates that Novatus in the 3rd century, after

singers, and ascetics, next to the deaconesses, virgins, and widows, afterwards to the children (276), and lastly to all the people in order—men first, and women afterwards. Deacons may not give the Lord's Body to presbyters (277), but they may to others (278) if directed so to do, nor may priests take the cup from the altar until it is given to them by a deacon (279). The Church of Portugal in the seventh century introduced the practice of giving the consecrated Bread sopped in the Wine, for which a spoon was generally used. This practice was afterwards followed in the Greek Church, but was forbidden in the West (280). Infants were, however, communicated with the cup only (281).

25. It is usual for men to receive the Eucharist in the right

giving the Eucharist, held the receiver's hands, and did not allow him to partake until he had sworn not to hold communion with Cornelius.

(276). Apost. Const. VIII. 13; II. 57. Cyprian De Laps, c. 9 and 25, relates how the deacon persisted in communicating a child unable to speak, which had partaken of the table of devils and refused to receive it.

(277). Concil. Nic. A.D. 325, Can. 18: It has come to the knowledge of the holy and great synod that deacons, who have not power to make the oblation, administer the Body of Christ to priests who have that power, which neither canon nor custom permits. Let all such practices be done away, and let the deacons receive the Eucharist either from the bishop, whose attendants they are, or from the presbyters, whose inferiors they are.

(278). Apost. Const. VIII. 28: When a bishop or priest has offered, the deacon distributes to the people, not as a priest, but as one that serves. Concil. Elib. A.D. 305, Can. 32: A priest may give him the communion, or a deacon if the priest direct him to.

(279). Pseudo-Hieronym. ap. Gratian 1, Dist. XCIII. c. 23; Priests are not allowed for fear of presumption to take the cup from the Lord's table, unless it be handed them by a deacon. Apost. Const. VIII. 13.

(280). Concil. Brac. III. A.D. 665, ap. Gratian III. Dist. II. c. 7, says that some, to give the communion fully, give the Eucharist sopped in wine. It then forbids the practice. Concil. Clermon., A.D. 1096, Can. 28, forbids it. Concil. London, A.D. 1175, Can. 15: We forbid the Eucharist to be sopped as if the communion by this means were more entirely administered. Christ gave a sop only to that disciple whom He pointed out for a traitor.

(281). Hugo de St. Victor, A.D. 1150, De Offic. Eccl. I. c. 20, in Migne App. 177: If it can be done without danger according to the primitive institution of the Church, let the Eucharist be given to children under the form of the precious Blood. Devoti, § 50.

hand, using the left to make a throne for it (282), and to partake of the cup through an ivory or silver reed (283). Women are forbidden to receive into the naked hand, but should either receive upon a white linen cloth, called a Housel-towel (284) or the Lord's napkin, or else have the Eucharist placed directly in their mouth (285). It was formerly the practice for the assisting presbyters at a solemn Eucharist, after receiving the Lord's Body, to place their hands upon the north part of the altar and to partake simultaneously, and for deacons afterwards to do likewise at the south part of the altar (286). All are directed to approach with reverence and holy fear as to the Body of their King (287), women being veiled as becomes their sex (288), and those who offer to partake in both kinds (289). According to

(282). Apost. Const. II. 57; Cyril. Hieros. A.D. 347, Cat. XXIII.: Approaching, therefore, come not with extended wrists or open fingers, but make the left hand a throne for the right, which is about to receive the king. Letter of Dionysius to Xystus in Euseb. VI. 9. Syn. Trull. A.D. 692, directs reception into the hand. Baeda IV. 29.

(283). See above, note 123.

(284). Concil. Autissiodor. A.D. 578, Can. 36, ap. Labbé VI. 645: A woman may not receive the Eucharist in her naked hand. Caesarius Arelat. Serm. 252 de Temp. (al. 229), Migne XXXIX. 2168: Men, when they are about to approach the altar, wash their hands, and all women display pure white linen cloths (linteamina), on which to receive the Lord's Body. Martene Lib. I. c. 4, art. 10, mentions these. Concil. Autissiodor. Can. 42, requires every woman when she communicates to have dominicalem suum [sc. fanonem]. This Baronius and Mabillon explain to be the Lord's napkin or the Housel-towel, also Duchêsne 214; others suppose it to be a veil. It may be included among the linteamina mentioned Const. 5 Reynolds, A.D. 1322. According to the *Guardian* 287, Feb. 18, 1891, Housel-towels continued to be used in St. Mary's, Oxford, in Newman's time, and were disposed of by him in 1859.

(285). Concil. Rothomag. A.D. 650, Can. 2.

(286). The 9th century Ordo. ap. Duchêsne p. 445.

(287). Cyril, quoted above, note 282.

(288). Apost. Const. II. 57: Let the women approach with their heads covered as becomes the order of women. Ambros. ap Gratian, Caus. XXXIII. Qu. V. c. 19, requires women always to be veiled in Church, because of the bishop, who represents Christ. Theodori Poenit. II. VII. 3, in H. & S. III. 196: Women may receive the sacrifice under a black veil.

(289). The command, Drink ye all of this, was addressed to the same

Roman use, priests and deacons communicated the principal laity and women in their places in church (290), and then the rest came forward to receive. According to the Alexandrian (291) and Gallican (292) use, the laity entered the choir to communicate. According to the Spanish (293), the laity received outside the choir.

26. The growing frequency of private Eucharists in Churches distant from the mother Church had for effect to detract from the position occupied by the solemn Eucharist, and led after the fifth century to a change in the manner in which the people were ordinarily communicated. There being, in lesser Churches, no deacon to take charge of the consecration of the cup, Eucharists celebrated in such Churches appear to have

persons who were bidden to offer this sacrifice (τοῦτο ποιεῖτε), and applies therefore, strictly, to all who offer only. Leo Serm. 4, De Quadrag. states that the Manichaeans refused to partake of the cup. Hence Gelasius, ap. Gratian III. Dist. II. c. 12: We hear that some having received a portion of the Lord's Body abstain from the cup of His holy Blood; let such either receive the entire sacrament or abstain from it altogether, because the division of one and the same mystery cannot take place without great sacrilege.

(290). Syn. Rom. A.D. 826, ap. Gratian III. Dist. II. c. 30, forbids the laity to enter the choir during service. Ordinal of 9th century, ap. Duchêsne, p. 446.

(291). Dionysius Alexandria A.D. 258, in Euseb. VII. 9: Standing at the table he extended his hand to receive.

(292). Concil. Turon. II. A.D. 567, Can. 4: For prayer and communion let the holy of holies be open to laymen and women, as is the custom. Gregory of Tours, Hist. Franc. X. 8; Caesarius Arelat. Serm. 289.

(293). Concil. Brac. A.D. 561, Can. 13. Concil. Tolet. IV. A.D. 633, Can. 18: Let the priests and deacons communicate before the altar, the clergy in the choir, and the people outside the choir. Devoti, § 51, Bridgett I. 37. This was also the African use according to Augustin, Serm. 392, c. 5, but neophytes were allowed to approach the altar, Serm. 225, c. 6. In the Church of Milan the laity communicated outside the choir as appears from St. Ambrose forbidding Theodosius to remain within the palisades of the altar, Theodoret. V. 18. The same appears to have been the Greek practice, from Concil. Laodic. A.D. 363, Can. 19, but the emperor was allowed a place in choir by Concil. Trull. A.D. 692, Can. 69.

been sometimes celebrated without consecrating the cup at all (294). When this omission had been corrected, still, as there was no one in the absence of a deacon to administer the cup to the people (295), communion could only be given in such Churches, to those who desired it, in one kind (296). Among nations much addicted to drunkenness (297) this practice had much to recommend it. It prevented excess (298), or the spilling of the chalice (299), and was also said to have the authority of the Church of Jerusalem in its favour (300). In collegiate Churches, or wherever the Eucharist was solemnly consecrated, the cup still continued to be given until variations from the common practice were discountenanced by the Council of Constance in 1415 A.D. (301). When wine was given to the people in lesser Churches it was, by the rule of the thirteenth century, always the unconsecrated benediction-wine (302).

(294). Concil. Araus. A.D. 441, Can. 17, requires both to be consecrated together, pointing to the existence of a contrary practice.

(295). Iren. Haer. I. 13 ; Hippolyt. Haer. VI. 34, both mention this as the use in their day. Ordo Romanus ap. Duchêsne 178 ; Lynd. 9.

(296). Basil Ep. 289, ap. Thomassin De l'Unité de l'Église II. 513, states that private communion was always in one kind. Const. 1 Peckham, A.D. 1281 : In small Churches it is allowed to none but them that celebrate to receive the Blood under the species of consecrated wine.

(297). Boniface to Cuthbert, A.D. 746, in H. & S. III. 382. Maskell, p. 49.

(298). Baeda, ap. Gratian III. Dist. II. c. 28.

(299). Lynd. 9 gives other reasons.

(300). Cyprian Ep. 74, 6 : All things are not observed among them [at Rome] which are observed at Jerusalem. La Marca Diss. in Syn. Cler.

(301). Devoti, § 50, states that communion in both kinds was usual [in larger Churches] in the time of St. Thomas Aquinas. At Sess. XIII. of the Council of Constance it was decreed that no one might reprobate the Church's use, or introduce communion under both kinds at his discretion.

(302). Const. 1 Peckham, A.D. 1281 : Let priests, when they give the Holy Communion at Easter, or any other time, instruct the people that the Body and Blood of our Lord is given them at once, under the species of Bread—nay, the whole living and true Christ, who is entire under the species of the Sacrament. Let priests, at the same time, instruct them that what is given them to drink is not the Sacrament but mere wine, to be drunk for the more easy swallowing of the Sacrament.

27. Formerly the faithful at rest were individually made partakers of the benefits of the Eucharist by having an offering made on their behalf, and their names presented or read out (303) by the deacon from the diptychs or roll of the Church (304). They were not, however, allowed to be communicated sacramentally after death (305). The practice of reading out names appears to have fallen into disuse with the decline of solemn Eucharists; and, in larger Churches, the names were instead inscribed in a book called the annal-book, album, or book of life which lay on the altar (306), and were only collectively

(303). Cyprian Ep. 9, 2: An offering is made for them, and their name is presented. *Id.* Ep. 65 (Cap. 1): It is not allowed that any offering be made by you for his repose, nor any prayer be made in the Church in his name. Innocent, A.D. 416, ap. Gratian III. Dist. l. c. 75: As touching the reading out of names [according to the Gallican practice] before the priest offers up prayer, and commends in his own prayer the oblations of those whose names are to be read out, you yourself must acknowledge how superfluous is the practice, that you should first mention to God, to whom nothing is unknown, the name of one whose host you have not yet offered. In the Mozarabic and Gallican rites, the diptychs were read out after the second principal prayer in the missa fidelium, and before the prayers which correspond with the Roman Canon. Mabillon Lib. I. c. 2. Stat. Eccl. Ant. A.D. 505, Can. 95: Those who withhold offerings for the dead are slayers of the needy. Concil. Aurel. II. A.D. 533, Can. 15: Offerings for the dead who die in any crime we deem may be permitted, provided they have not committed suicide. Theodori Poenit. II. v. 4, l. c. III. 194: It is customary for masses to be said for [deceased] monks every week, and to read out their names. *Id.* I. v. 12, *Ibid.* p. 181: If a priest celebrates mass, and another, in reading out the names of the dead, includes heretics, and the priest afterwards discovers it, let him do penance.

(304). The diptychs were plates of wood or ivory folded into two parts—one containing the names of the living, the other of the dead. At a later time they were folded into three parts. Maskell, Early Liturgy, 124; Tertullian de Cor. Mil. c. 3. Apost. Const. VIII. 41: Let us pray for our brethren that are at rest in Christ. Syn. V. A.D. 553, ap. Gratian, Caus. XXIV. Qu. II. c. 6, says that names may be placed in them after death.

(305). Concil. Carthag. III. A.D. 397, Can. 6; Concil. Autissiodor. A.D. 578, Can. 12.

(306). The book of life is mentioned by St. John (Rev. v. 8). In the Antiquities of Durham (Surtees Society) it is said, There did lie on the high altar an excellent fine book, very richly covered with gold and silver,

remembered in the commemoration of the dead towards the close of the canon (307).

28. To enable the absent faithful to participate, portions of the Eucharist were from the earliest times reserved for them. Some of these were carried to the sick by the deacons (308) in small wicker baskets and glass vials (309). In the Gallican Church the dying appear to have been communicated with the cup only (310), but usually the hallowed bread was conveyed, and the sick were communicated by intinction with a sop (311).

containing the names of all the benefactors towards St. Cuthbert's Church, from the very original foundation thereof—the very letters of the said book being, for the most part, all gilt. This Liber Vitae, which, for six centuries, lay on the high altar, first at Lindisfarne, then at Chester-le-Street, and, lastly, at Durham, is still extant, and has been edited. Baeda Prolog. 1 ad. Eadfrid: After my death do you for the redemption of my soul, as that of a friend and close companion, offer masses and enter my name among those of your community. Lingard's Anglo-Saxon Church, II. 64.

(307). Florus diaconus De actione missarum, A.D. 853, in Bib. Max Lugdun. XV. 79 says, after the words, "who sleep the sleep of peace," &c., in the prayer, Memento etiam Domine, towards the close of the canon. Maskell, p. 122.

(308). Justin 1 Apol. 67, A.D. 139; Concil. Clovesho, A.D. 747, Can. 26; Edgar's Law 38, A.D. 960: Let the priest have the Housel always in readiness for them that may want it. Gratian III. Dist. II. c. 93; Egbert's Excerpt 22, A.D. 740: That priests have the Eucharist always ready for the sick.

(309). Hieronym. Epist. 125 c. 20: Nihil illo ditius qui Corpus Domini canistro vimineo et Sanguinem portat in vitro. Pellicia II. 10, states that this continued to be the practice up to the sixth century. According to Fridegonde in Acta SS. Benedict. Saec. IV. I. 725, Wilfrid was thus communicated on his death-bed in the seventh century:

> Spiritus ergo viri, Michael repetente, beati
> Vimineo condens Corpus Kyriale canistro
> Exhausit vitro vitalem digne cruorem.

(310). Stat. Eccl. Ant. A.D. 505, Can. 76, ap. Gratian, Caus. XXVI. Qu. VI. c. 8: Et infundatur ori ejus Eucharistia. Concil. Tolét. XI. A.D. 656, Can. 11, mentions a sick man only able to drink the cup, but unable to swallow the Eucharist.

(311). In Eusebius VI. 44, Dionysius of Alexandria, A.D. 285, says: I gave the boy [who came as a messenger] a small portion of the Eucharist, telling him to dip it in water and drop it into the old man's

Other portions were sent by bishops to one another at Easter to keep up communion in the one Body between different parts of the Church (312), and by the bishop to his presbyters within the city. This was termed the Fermentum, but to send beyond the city was forbidden in the fourth century (313). Others again were reserved for the commixture at the next solemn Eucharist by way of preserving the continuity and intercommunion of the Church of all time. This was called the rite of the Sancta in the Roman Church. The equivalent of the Fermentum and the Sancta in parts of the Eastern Church is the holy leaven used to leaven the Eucharistic bread, which is traditionally derived from the Apostles' times.

29. In the Church of Antioch the Eucharist was reserved in a vessel in the form of a dove (314); in the Gallican Church, in that of a tower (315); in the Roman Church, in a box called a Eucharistial or new Sepulcre of the Body of Christ (316), which was sometimes kept in the sacristy (317), hence called

mouth. Baeda IV. 14, A.D. 730, says: Causing also part of the Lord's Oblation to be carried to the sick boy. Leofric Missal, p. 241, A.D. 1040, directs the sick man to be communicated by intinction.

(312). In Euseb. V. 24, Polycrates, A.D. 190, addresses Victor: The presbyters before this sent the Eucharist to those Churches who observed Easter differently.

(313). Concil. Laodic. A.D. 363, Can. 14, forbids the Eucharist to be sent. Innocent I. A.D. 404, Epist ad Decentium 25, c. 5, relates that he sent the Eucharist by acolytes to presbyters in the city, but could not send it to presbyters in outlying villages because of this rule.

(314). Ambros. Ep. 4 ad Felic.; Concil. Const. sub Mena Act 5 in Harduin II. 1319. Golden doves are stated to have been used at Antioch for this purpose. Devoti, § 52.

(315). Gregor. Turon. De glor. Martyr. c. 85; Duchêsne 195. Iren. IV. 36, 2, commenting on Matt. XXI. 33, says that the tower built first was the choice of Jerusalem, but "the beautiful elect tower, raised everywhere" after the wicked husbandmen had been cast out, is the Church.

(316). Martene 257; Lingard, Anglo-Saxon Church, II. 39; Bridgett I. 239.

(317). This appears to have been the Gallican use, Bridgett I. 237. Pseudo-Clemens. ap. Gratian III. Dist. II. c. 23: Priests, deacons, and subdeacons ought with fear and trembling to guard the remains of the Lord's Body. Concil. Matiscon II. A.D. 585, speaks of the remains being in sacrario.

the Housel-porch, at other times in the baptistery (318), or in the infirmary of a monastery (319), or in a close place in the wall of a church (320). After the thirteenth century the reservation was ordered to be in a tabernacle (321), or canopied recess (322), called a ciborium (323), usually placed above the high altar, and within a box called a pyx (324), lined with the whitest linen, and to be kept with care (325) under lock and key (326).

(318). Paulinus Ep. 22 ad Sever.

(319). Baeda IV. 24, relates this of Hilda's monastery.

(320). Lynd. 248, says this was the practice in Holland and Portugal, and was more conformable to the decree of Honorius III. in Decret. Lib. III. Tit. XLI. c. 10, than the tabernacles introduced by Peckham.

(321). Honorius III. in Decret. Lib. III. Tit. XLI. c. 10. Const. 7 Peckham, A.D. 1279, enjoins that for the future a tabernacle should be made in every Church with a decent enclosure, according to the greatness of the cure and the value of the Church, in which the Lord's Body may be laid, not in a purse or bag, but in a fair pyx, so that it may be put in and taken out without any hazard of breaking. Lynd. 248, says that it is the parishioners' duty to provide the pyx, but the incumbent's to provide the tabernacle.

(322). Bridgett II. 87; I. 237, states that tabernacle in later times meant a niche to receive a statue, and was the name given to any recess with a canopy, such as the recess in a reredos. Durandus I. c. 2 and 3, uses it of the pyx.

(323). The ciborium is described as an umbraculum projecting over the holy table, and appears to be the apsidal vault, of which the baldachino is the modern equivalent.

(324). Concil. Ebor. A.D. 1195, Can. 1; Concil. Westminster A.D. 1200, Can. 1; Const. 21 Edmund, A.D. 1236; Const. 7 Peckham, A.D. 1279; Const. 4 Reynolds, A.D. 1322: Let the Holy Eucharist be kept in a clean pyx of silver or ivory, or otherwise as befits the sacrament. This is sometimes called capsa, or repository, or a chrismal.

(325). Theodori Poenit. I. XII. 8, A.D. 673, in H. & S. III. 187: He who loses the sacrament, so that it is devoured by wild beasts or birds, if by accident let him fast weeks, if by negligence, three Lents. Gratian III. Dist. II. c. 90, prescribes sixty days' penance, if through carelessness a mouse consume it; thirty days for letting it fall in Church, if it cannot be found.

(326). Decret. Lib. III. Tit. XLIV. c. 1.; Synod Chichester A.D. 1289, in Wilkins II. 169. Bridgett II. 89, shows that at Liège in 1182 the pyx was locked.

30. Reservation of the Eucharist for subsequent communion, although universal in the ages of persecution, was discountenanced in the fourth century for fear of abuses (327). The custom then was for the unused Particles to be consumed by the priest or by some innocent persons of good life (328). Mediæval canons forbid reservation entirely, except for the communion of the sick (329), for whose benefit it was directed to be made afresh every Sunday (330). The Eucharist thus reserved should not, however, be kept from one year's end to another (331), nor until the particles grow stale (332), nor for more than eight days (333). It should never be denied to the

(327). See note 249.

(328). Evagrius IV. 36: It is an old custom in the imperial city that when there remained over a considerable quantity of the holy fragments of the immaculate Body of Christ our God, boys of tender age should be fetched from among those who attend the schools to eat them. Nicephorus XVII. c. 25, says that when a boy at school he himself frequently partook of those fragments. Concil. Matiscon. II. A.D. 585, Can. 6: Whatever remains of the sacrifices are found in the vestry after mass, let innocent persons be brought to the Church to consume them fasting, on Wednesday or Friday. Syn. Exon. A.D. 1287, in Wilkins II. 132, quoted note 329. Const. Marsh Dunelm, A.D. 1220; *Ibid.* I. 580.

(329). Bridgett Hist. Eccl. II. 85, observes that the practice of reserving particles for communicants at a subsequent celebration was in the Middle Ages unknown. Can. 37, Elfric A.D. 957: That Housel which was hallowed to-day is as holy as that which was hallowed on Easter day. Syn. Exon. A.D. 1287, in Wilkins II. 132: For the sake of the sick, the incumbent must always have consecrated Hosts, which it is strictly forbidden to keep more than 7 days; those that remain are to be consumed on the Sunday before the ablution of the chalice by the celebrant or another priest. Giraldus, A.D. 1180, Gemma Eccl. Dist. I. c. 8: The priest must not presume to consecrate more Hosts than are sufficient for the people, and if any remain over they must not be kept till the next day, except a few for viaticum, but be consumed reverently by the clergy.

(330). Concil. Ebor. A.D. 1195, Can. 1; Concil. Westminster A.D. 1200, Can. 1; Const. 7 Peckham, A.D. 1279; Const. 4 Reynolds, A.D. 1322.

(331). Can. 37 Elfric, A.D. 957.

(332). Theodori Poenit. I. XII. 6, A.D. 673, orders it to be burnt if stale through keeping; Edgar's Law 38, A.D. 960: That the priest take care that the Housel does not grow stale.

(333). Concil. Westminster A.D. 1138, Can. 2.

dying (334), but according to mediæval rule it should be carried to them, not by laymen or women (335), but by the priest vested in surplice and stole, bearing it on his breast (336), with a light in a lanthorn going before him, because He who is the brightness of eternal light is being carried forth (337), and a bell sounding to incite the people to due reverence (338). In cases of necessity it may be carried by a deacon, or by any one (339), and in such cases consecration is sometimes allowed in the sick chamber itself (340).

(334). Concil. Nic. A.D. 325, Can. 13: If any one is at the point of death let him not be deprived of the last and most necessary viaticum. Theodori Poenit. I. VIII. 5, in H. & S. III. 184; I. IX. 7; *Ibid.* 185: If any priest shall refuse to baptize a sick person commended to him for baptism, or for the viaticum (pro intentione itineris) . . . let him be deposed.

(335). Concil. Rothomag, A.D. 650, ap. Gratian III. Dist. II. c. 29; Can. 6, Theodulf, A.D. 994.

(336). Concil. Rothomag. l. c., Const. Marsh, A.D. 1220 in Wilkins I. 281; Const. Cantilupe, A.D. 1240, *Ibid.* I. 665; Concil. Ebor. A.D. 1195, Can. 2: Let the priest in person carry the Host in a clerical habit, suitable to so great a sacrament, with a light going before. Concil. Westminster A.D. 1200, Can. 1, mentions a cross also. Const. 7 Peckham, A.D. 1281, and Const. 4 Reynolds, A.D. 1322; Lynd. 249.

(337). Wisdom VII. 26; Grosstêste Epist. 52 (Rolls-Series); Const. Quivil. Exon. A.D. 1287, in Wilkins II. 132; Lynd. 249, says: The bell and lanthorn may be fastened to the horse's neck in riding.

(338). Lynd. 249 gives the prayer of due reverence, as:

Salve Lux mundi, Verbum Patris, Hostia vera
Viva Caro, Deitas integra, verus Homo,
Salve Caro Christi, quae pro me passa fuisti,
Intus me munda, Christi Caro, Sanguis et unda.

Or otherwise:

Ave verum Corpus natum ex Maria Virgine,
Vere passum, immolatum in cruce pro homine,
Cujus latus vulneratum vero fluxit sanguine,
Esto nobis praegustatum mortis in examine
O dulcis, O pie, O Jesu, fili Mariae.

Maskell p. 139; Bridgett II. 66, gives others.

(339). Euseb. VI. 44, relates how Bishop Dionysius of Alexandria, in 258, sent the Eucharist by a boy. Can. 16 Elfric, A.D. 957; Concil. Westminster A.D. 1138, Can. 2; Concil. Ebor. A.D. 1295, Can. 6.

(340). See note 90.

# IV.

# PENANCE.

## Penance as the Ministry of Reconciliation.

1. Penance has been defined to be a mystery wherein he who confesses his sins is on the outward declaration of the priest loosed from the guilt of them by Jesus Christ Himself (1). It is called the sacrament of the returning (2), or the reconciliatory imposition of hands (3), a singular remedy for such as have suffered shipwreck from the faith (4), and is described as one of the three kinds of penitence (5), one of the seven means (6)

(1). Catechism of Russian Church.

(2). Const. 6 Peckham, A.D. 1281 ; Lynd. 43.

(3). Concil. Araus. A.D. 441, Can. 3.

(4). Hieronym. ap Gratian Caus. XXXIII., Qu. 3, Dist. 1. c. 72, repeated Const. 18 Boniface, A.D. 1261 : The sacrament of confession and penance is like a plank offered to us after shipwreck, and the last refuge to them that are passing the waves of this troublesome world. Const. 6 Peckham, A.D. 1281 : The sacrament of penance is a singular remedy for such as have been shipwrecked.

(5). Augustin ap. Gratian Caus. XXXIII. Qu. III. Dist. 1. c. 81, says there are three kinds of penitence whereby sins are forgiven : (1) that which leads to baptism, (2) the life-long penitence of the baptized, who look forward to eternal life, and (3) penance, such as fasting, almsgiving, and prayer for breaches of the decalogue.

(6). Origen Hom. 2 in Levit., followed by Cap. 36 Theodulf, A.D. 994 : Sins are forgiven by seven means : (1) by baptism, which was given for the remission of sins ; (2) by suffering, concerning which the Psalm-poet saith, Blessed is the man to whom the Lord imputeth no sin ; (3) sins are redeemed by almsdeeds : As water quencheth fire, so doth almsdeed sin [Ecclus. III. 20], and Give alms whereby ye may be clean [Luke XI. 41 ; 2 Clem. Rom. c. 14] ; (4) by forgiving others, as it is said in the Gospel, Forgive, and ye shall be forgiven ; (5) by instruction and preaching, as If one converteth a man from wrong to right, he ransoms his soul from death and covers a multitude of sins [James v. 19, 20] ; (6) by the true love of God and man, as it is said, The true love of God and man covers the multitude of sins [1 Peter IV. 8] ; (7) by satisfaction [penance], as David saith, I ceased from my pride and my misdemeanour and do penance, so I

whereby remission of sins is obtained, and one of the two planks for the salvation of sinners (7). The term penance is, however, used in a wide sense to express three distinct but connected things: (1) The sacrament of penance, or ministry of reconciliation (8), sometimes called the court of penance (9); (2) the remedial power (virtus) or discipline, which is the antecedent condition of reconciliation (10); and (3) the sacrament

have forgiveness [Ps. XXXII. 4, 5]. Barrow De potest. clavium, enumerates five means: (1) preaching, (2) baptism, (3) penance, (4) communion, (5) relaxation of censures; but communion was never allowed as forgiveness of sins except to the dying, and relaxation of censures is another name for penance. Wordsworth, on 2 Cor. v. 19, says that the ministry of reconciliation is exercised in three ways: (1) in preaching, whereby the kingdom of heaven is opened by the key of knowledge; (2) in baptism; (3) in the absolution of penitents. These are called the word, the sacraments, and the ministry.

(7). Tertullian de Poenit. c. 7: Although the gate of forgiveness has been fastened up with the lock of baptism, God has permitted it still to stand somewhat open. In the vestibule He has stationed repentance, the second to open to such as knock, but now once for all . . . never more. Leo, A.D. 452, ap. Gratian Caus. XXXIII. Qu. III. Dist. 1. c. 49: The manifold mercy of God so succours human failings, that not only by the grace of baptism, but also by the medicine of penance, the hope of eternal life is kept alive. Augustin *Ibid.* Caus. XXXII. Qu. I. c. 7, says that men are either cleansed in baptism or healed in penance. Cap. 36 Theodulf, A.D. 994: Satisfaction [penance] is, as it were, a second baptism; as in baptism the sins before committed are forgiven, so by satisfaction [penance] are the sins committed after baptism. Lynd. 231, 237: The other baptism takes away the guilt and also the punishment.

(8). Hieronym. ap. Gratian Caus. XXXIII. Qu. III. Dist. 1. c. 70: The Church of Christ is glorious, not having spot or wrinkle. He who is a sinner and spotted with uncleanness cannot be said to be of the Church, nor called a subject of Christ. But it is possible that, as the Church which previously had a wrinkle and spot has been restored to youth and beauty, so the sinner may have recourse to the physician, because The whole have no need of a physician, but they that are sick, that their wounds may be healed, and they may be restored to the Church, which is the Body of Christ.

(9). See below, note 109.

(10). Tertullian de Poenit. c. 9: Confession is a discipline for man's prostration. Hieronym. l. c. c. 72, speaks of the sacrament of (1) confession and (2) penance. Const. 18 Boniface, A.D. 1261.

of anointing or annealing, which is the consummation of the life-long penitence of the baptized.

2. The power of forgiving sins was by Christ committed to His Church (11). Hence the bestowal of forgiveness as well by penance as by baptism would seem to make penance a sacrament ordained by Christ (12). Nevertheless, since neither the giving of penance, nor the imposition of hands, nor a declaration of absolution are known to have been directly prescribed by Christ for that purpose, these particular modes of giving remission of sins would appear to be an institution of the Church. After a lengthy dispute in the 3rd century as to the possibility of sins unto death being forgiven at all by the Church after baptism (13), it was finally ruled that even idolatry, murder, adultery (14), and other crimes to which the civil law attached

(11). Matt. xvi. 19 ; xviii. 17–19 ; John xx. 22, 23.

(12). John xx. 23 ; Heb. xii. 6 ; Rev. ii. 4 ; 2 Sam. xii. 14 ; 1 Cor. v. 5 ; Iren. Haer. i. 6, 3 and 10, 1, speaks of some being holy from their repentance. Leo Epist. 108 (al. 83) : The Mediator between God and man, Christ Jesus, hath given this power to the presidents of His Church, that they should both impose penance on those who confess, and should admit the same when purified by wholesome satisfaction, through the gate of reconciliation, to the communion of the sacraments.

(13). There being no second baptism for the remission of sins (Heb. v. 14 ; Hippolytus Haer. vi. 36 ; ix. 7), the Novatians, according to Socrates i. 10, contended that "those are unworthy of participation in the divine mysteries who, after baptism, have committed a sin unto death (1 John v. 16) ; that such indeed should be exhorted to repentance, but must not expect remission from the priests but from God, who is alone able and has authority to forgive sins." Cyprian Ep. 55.

(14). Tertullian de Poenit. c. 4 : To all sins God grants pardon by means of repentance. Cyprian Ep. 5 (Oxf. 55), 27 : No one is to be restrained from the fruit of satisfaction and the hope of peace. Lactantius vi. 24 : It is possible for one who has turned aside to unrighteousness to be brought back and to be set free if he repents of his actions, and turning to better things makes satisfaction to God. Ambros. ap. Gratian Caus. xxxiii. Qu. iii. Dist. 1. c. 50 : God has excepted no crime, but has forgiven all sins. Concil. Aurel. ii. a.d. 533, Can. 20 ; Concil. Andegav. a.d. 453, Can. 12 : Room for repentance is open to all. Yet Concil. Ancyr. a.d. 314, Can. 22, excluded voluntary homicides from communion for life. Tertullian De Pudic. c. 1. a.d. 200, censured Zephyrinus for re-admitting adulterers to communion. Concil. Elib. a.d. 305, also excluded from communion for life for several

the penalty of death, might be forgiven by the aid of the collective prayers of the faithful (15), but not without sharp discipline and satisfaction (16) on the part of the offender. Penance therefore came to be called the baptism of labour, because it cleanses from the guilt of sin, but does not necessarily deliver from its temporal consequences, only substituting for punishment voluntarily undertaken labours (17).

3. In the early days of the Church both the avowal of sin, the discipline imposed to cleanse from its effects, and the reconciliation took place openly and solemnly. It was then permitted, both for avoiding scandal to others and also in order to induce those guilty of excesses the more readily to come to repentance, to deal with private offences privately, whilst open penance was still reserved for open sins (18), and such

crimes. To the crimes named above, Concil. Epaon. A.D. 517, Can. 31, and Cap. Theodulf ap. Gratian Caus. XXII. Qu. I. c. 17, added perjury.

(15). Math. XVIII. 19; Tertullian De Pudic. c. 2: Where there is the efficacious power of making request, there likewise is that of remission; where there is no power of making request, there is none of remission. *Ibid.* c. 13; Cyprian Ep. 39 (Oxf. 43), 2: By prayers and supplications, with long and continual satisfaction, the Lord must be appeased.

(16). Concil. Laodic. A.D. 363, Can. 2, ap. Gratian Caus. XXVI. Qu. VII. c. 4: To such as have fallen into various sins, and by prayer, confession, and penitence prove conversion from their evil ways, let a time of penance be appointed according to the quality of the sin, because of the mercy and goodness of God. Chrysost. Hom. I. post Pent.: Thus after baptism sins are purged away with much pain and labour. Blickling Homil. I. 292: No man can be baptized twice; but if a man go wrong after his baptism, we believe that he may be saved if he sorroweth for his sins with tears, and do penance for them as his teacher shall instruct him.

(17). Loening Kirchengeschichte I. 248: Penances are not punishments, but means for avoiding punishment. Saxon Homil. in Soames 303: Penance (deadbot) with cessation from evil . . . and holy prayers heal and medicine the soul.

(18). Iren. Haer. I. 13, 7: Some make a public confession of their sins, but others, ashamed to do this, have apostatised altogether. Augustin ap. Gratian Caus. II., Qu. I. c. 19: Those sins which are committed in secret must be censured in secret. Leo, A.D. 459, *Ibid.* Caus. XXXIII., Qu. III. Dist. I. c. 89: Albeit the plenitude of faith appears laudable, which for the fear of God is not ashamed to blush before men, yet, since all sins are not of a kind to bear publication by those who ask for penance, let the

other private sins as the confessor might appoint. A presbyter, called a penitentiary (19) or general confessor, was appointed to act for the Church, to hear the confessions of offenders, to prescribe the period and nature of discipline according to the received rules (20), to pray for the guilty ones, or to direct them to seek the corporate prayers of the Church as penitents (21),

custom which cannot be approved (improbabilis) be removed, lest many should be deterred from the remedies of penitence. . . . That confession suffices which is offered first to God, and then to His priest who acts as an intercessor for the sins of penitents. More then will be [induced to have recourse to penance, if the conscience of him who confesses is not laid bare to the ears of the public. Concil. Ticin. A.D. 850, Can. 6: That such as have sinned in secret confess to those whom the bishops and archpriests of flocks have selected as suitable physicians for the secret wounds of souls. Lynd. 127; Innocent III., A.D. 1199, in Decret. Lib. I. Tit. IV. c. 3, forbids the consulting of the general community.

(19). There appear to have been two classes of presbyters—(1), teaching presbyters, who are mentioned by Cyprian Ep. 23; and (2), penitentiary presbyters. Sozomen VII. 16, relates that this was the practice among all Churches and sects. The office of penitentiary was abolished at Constantinople in 389 A.D., under circumstances related by Socrates V. 19. Ambros. ap. Gratian Caus. XVI. Qu. I. c. 21, recognises it as one of the duties of presbyters to give penance; also Gregory, *Ibid.* c. 23. Concil. Clovesho, A.D. 747, Can. 11, names judging [*i.e.*, giving penance] as one of the presbyter's three duties. Lynd. 341, 326, says the necessary qualifications to make a good confessor are, (1) a retentive memory to carry the past; (2) forethought to anticipate the future; (3) knowledge of human nature; (4) skill in applying remedies; (5) willingness to learn from others; (6) discretion to distinguish good from evil; (7) personal holiness, without which discretion is impossible.

(20). Concil. Carthag. III. A.D. 397, ap. Gratian Caus. XXVI. Qu. VII. c. 5: Let the times of penance be awarded penitents, according to the difference of their sins, by the bishop's discretion. Concil. Nic. A.D. 325, Can. 11, ordered twelve years for the greatest sins, which, in the Western Church, were reduced to seven years. Leo A.D. 458, ap. Gratian Caus. XXVI. Qu. VII. c. 1.: The times of penance must be awarded with discretion.

(21). Origen. Hom. II. in Ps. 37: Scripture teaches us that we must not conceal the sins we have committed. . . . But be careful to choose well the person to whom you disclose your sins. . . . If he decides that your evil is such that it ought to be exposed and treated before the assembly, . . . be obedient to the experienced counsels of this chosen physician of your soul.

and at the end restore them, if found deserving, under the bishop's direction (22).

4. The duties of the penitentiary were always considered the most difficult of sacerdotal duties, (1) because in weighing the moral guilt of sin so many circumstances have to be considered, such as the sex, age, condition, position in life, the mind and general habit of the offender (23), which involves discretion; and (2) because in prescribing discipline penances have to be awarded, not merely by way of satisfaction for the injury done to the outward holiness of the Church, which is the

(22). Herard of Tours, *Ibid.* Caus. XXVI. Qu. VI. c. 4: Let priests reconcile penitents, in respect of secret sins, by the bishop's direction. Ayliffe 19, 21.

(23). Iren. Haer. IV. 1, 1: It is impossible for one to heal the sick if he has no knowledge of the disease. Augustin, *Ibid.* Caus. XXIV. Qu. 1, c. 21: Let us not apply treacherous balances—weighing what we wish, how we wish, at our own caprice. Leo, A.D. 458, *Ibid.* Caus. XXVI. Qu. VII. c. 1: The times of penance must be determined by your judgment, according as you observe the mind more or less devout, having regard, moreover, to old age and all kinds of perils, and considering the necessities of health. Baedae Poenit. A.D. 730, in H. & S. III. 327: Exhorting every discreet priest of Christ carefully to discriminate the sex, age, condition, state, the person of the penitent, and his heart. Egbert's Poenit. A.D. 766, *Ibid.* 417: All, therefore, are not to be weighed in the same scale, although they are detected in the same offence, but a distinction must be drawn between rich and poor, freedmen and slaves, &c. Nicolaus I. A.D. 864, ap. Gratian l. c. c. 3: Because all crimes are not equal . . . we must leave this to your decision, seeing you can investigate the place and times of religion, the degree of the fault, and the repentance, and the sighs, of those who come to confess. Syn. VIII. A.D. 869, *Ibid.* c. 7: A time of penance must be awarded commensurate with the quality of the offence. Can. 31 Elfric, A.D. 957; Can. 3, 10, 11, Dunstan, A.D. 963; Concil. Ensham A.D. 1009, Can. 22: Distinctions are discreetly to be made between the old and the young, the wealthy and indigent, the firm and the infirm, and every rank, both in religious shrift and in worldly corrections. Alexander III. to Bishop of Exeter, in Decret. Lib. v. Tit. XII. c. 6; Concil. Westminster A.D. 1200, Can. 4: In administering penance we charge that priests, according to the canons, diligently consider the circumstances, the condition of the person, and of the sin, as also the time, place, and occasion, together with the backwardness or devotion of the penitent. Lynd. 212, 261, 68.

province of public discipline, but also as tests of repentance (24) and aids to purification from sin (25), which is the principal consideration in private discipline. Accordingly a special branch of canon law, called casuistry (26) or moral theology, is devoted to this subject, and individual penitentaries are required to exercise their office strictly in accordance with the general rules prescribed by the Church.

5. Under the parochial system the duties of the penitentiary were, with certain restrictions, committed to all incumbents having a cure of souls (27), and in consequence express words giving them power to remit and retain sins (28) were introduced at the end of the office for the ordination of priests. Rules for their guidance were at the same time laid down in so-called penitentiaries (29). All the graver sins and more difficult cases

(24). Augustin ap. Gratian, Caus. XXXIII. Qu. III. Dist. 1. c. 84 : The measure of grief, rather than of time, must be considered in awarding penances. Epist. v. c. 1, states that satisfaction is made, not so much by the penances themselves, as by the submission to them. Concil. Clovesho, A.D. 747, Can. 27 ; Egbert's Poenit. XVI. in H. & S. III. 431 ; Lynd. 231, 336 ; Innocent III. in Decret. Lib. v. Tit. XXXVIII. c. 8 ; Lynd. 231, 336.

(25). 1 John III. 3.

(26). Casuistry is, properly speaking, the choice between conflicting duties which determines the relative guilt of sins. Thus Augustin ap. Gratian Caus. XXXIII. Qu. II. c. 9, says : Since, by the law of Christ, it is alike forbidden to kill an adulteress, and to marry another in her lifetime, both must be abstained from. But if he will do one which is not allowed, let him rather commit adultery by marrying another in her lifetime than commit murder.

(27). Concil. Paris, A.D. 829, Can. 29, forbids mass-priests to absent themselves from their churches, lest children should die unbaptized, or adults unshriven. Elfric, Can. 31, A.D. 957 : The priest shall likewise with discretion enjoin penance. The shrift referred to in Dunstan, Can. 4, 16, 54, 71, A.D. 963 and Cap. 31 Theodulf, A.D. 994, is the mass-priest.

(28). The words, Whosoever sins ye remit, &c., were added in the 13th century, after the ordination Eucharist was concluded.

(29). Euseb. VI. 44, says that Dionysius, Bishop of Alexandria, A.D. 250, wrote a book on degrees of faults. Penitentials exist of Gildas, A.D. 570, in H. & S. I. 108 ; of Theodore, A.D. 673, *Ibid.* III. 180 ; of Baeda, A.D. 730, *Ibid.* 326 ; of Egbert, A.D. 750, *Ibid.* 423 ; Alfred's Law, A.D. 877 : Holy bishops in many synods have settled the satisfactions due for many human crimes, and have in synodical books commanded to be writ down in what case one doom, in what another.

were nevertheless reserved for the bishop (30) or his penitentiary to deal with, except at the hour of death (31), and those greater crimes for which the canons forbid individual bishops to give penance were reserved to the metropolitan, or to the greater metropolitan, the pope, as representing the Church at large (32).

6. The crimes which by mediæval constitutions are reserved to superiors (33) include murder (34), sacrilege (35), unnatural crime (36), incest (37), violence to consecrated virgins (38), violence to parents (39) or lesser clerks (40), perjury (41), breach of

(30). Concil. Elib. A.D. 305, Can. 32: If any one by a grave lapse has fallen into the ruin of death, penance may not be done before a presbyter, but only before the bishop. Cyprian Ep. 12: Those who have received certificates from the martyrs, . . . if they should be seized with peril of sickness, let them, without waiting for my presence, before any presbyter who may be had, or if a presbyter should not be found and death be imminent, before a deacon, make confession of their sin. Concil. Winton. A.D. 1071, Can. 11: That bishops only give penance for gross sins. Const. 16 Edmund, A.D. 1236; Devoti Inst. Lib. II. Tit. II. § 85; Lynd. 340.

(31). Cyprian Ep. 12; Concil. Westminster A.D. 1138, Can. 10.

(32). Cyprian Ep. 31, mentions cases which he must consider with a common council. Concil. Nic. A.D. 325, Can. 5 and 8; Dunstan, Can. 38, A.D. 963: If one slay an ecclesiastic, or his own nearest kinsman, let him leave his country and estate and do as the pope directs. Cnut's Law 12, A.D. 1018: If an altar-thane be a man-slayer, . . . let him go away as far in pilgrimage as the pope enjoins. Const. 16 Edmund, A.D. 1236: But there are cases in which the pope alone has power to absolve. The Dimetian Laws in H. & S. I. 279: If a traitor return with a letter showing he is absolved by the pope he is to have his patrimony.

(33). Can. 12 Dunstan, A.D. 963, says any capital crime.

(34). Theodori Poenit. I. IV. 5, in H. & S. III. 180: If one kill a clerk he is in the bishop's judgment. Const. 16 Edmund, A.D. 1236; Const. 7 Peckham, A.D. 1281.

(35). Const. 16 Edmund, including sorcery. Concil. Westminster A.D. 1200, Can. 7.

(36). *Ibid.*

(37). *Ibid.* Const. 17 Peckham, A.D. 1281.

(38). *Ibid.*

(39). *Ibid.*

(40). *Ibid.* Theodori Poenit. A.D. 673, in H. & S. III. 180.

(41). Athelstan's Law 7, A.D. 925; Cnut's Law 25 A.D. 1018; Concil. Ebor. A.D. 1195, Can. 7; Concil. Westminster A.D. 1200, Can. 7.

vows (42), arson (43), all the excesses condemned in general sentences of excommunication (44), knowingly using false weights (45), neglect of clerical dress (46), disobedience to the rules as to clerical stipends (47) and preaching (48), molestation in tithe-taking (49), clandestine marriages (50), and assaults committed in churchyards (51). Most of these excesses are in the southern province allowed to be dealt with by the bishop or his penitentiary (52), but heresy is by English rule reserved to the archbishop (53); and some crimes are reserved to the pope only (54), such as killing or offering violence to one in holy orders, a monk or a nun (55), burning a church (56), falsifying a papal bull, or knowingly using one falsified (57), communicating with one excommunicated by the pope, or partaking in crime with such a one (58), and holding a plurality of benefices without a dispensation (59). In the northern province all the thirty-six

(42). Const. 16 Edmund, A.D. 1236.

(43). Concil. Westminster A.D. 1200, Can. 7.

(44). Const. 1 Stratford, A.D. 1343.

(45). Const. Chichele, A.D. 1430.

(46). Const. 2 Stratford, A.D. 1343.

(47). Const. 1 Sudbury, A.D. 1378.

(48). Const. 1 Arundel, A.D. 1408.

(49). Const. 7 Mepham, A.D. 1328: We reserve the absolution of them to the diocesan of the place. Const. 4 Stratford, A.D. 1343.

(50). Const. 7 Zouche, A.D. 1347.

(51). Const. 1 Bourchier, A.D. 1463.

(52). Const. 16 Edmund, A.D. 1236, mentions the bishop's penitentiary; also Concil. Ebor. A.D. 1195, Can. 17; Const. 5 Otho, A.D. 1237; Const. 2 Langham, A.D. 1367; Const. Chichele, A.D. 1430.

(53). Const. 1 Arundel, A.D. 1408; Const. 6 Winchelsea, A.D. 1305, Lynd, 284, 294.

(54). Const. 16 Edmund, A.D. 1236.

(55). See *Excesses*, § 20; Concil. Westminster A.D. 1138, Can. 10: Let him be struck with anathema that kills a clerk, monk, nun, or lays violent hands on such. Let none but the pope give him penance at the last, unless in extreme danger of death.

(56). Lynd. 328.

(57). *Ibid.*

(58). *Ibid.*

(59). Const. 13 Otho, A.D. 1237; Const. 1 Peckham, A.D. 1279; Const. 24 Peckham, A.D. 1281: We cannot dispense in cases of pluralities.

greater crimes are reserved to the archbishop or his penitentiary (60).

7. The essentials of penance considered as the ministry of reconciliation are penance or discipline as the remote matter, the giving of penance or prescribing of discipline together with the imposition of hands (61) as the proximate matter, and the prayer of the Church that the discipline may avail through the Holy Ghost (62) to intensify repentance, so as to obtain God's forgiveness as the form (63). As the imposition of

(60). Const. 5 Thorsby, A.D. 1363 : Whereas rectors, vicars, and priests do admit their parishioners to confession without exception or making any distinction between lesser and greater crimes. . . . We will make it appear in brief what these greater crimes are which we reserve to ourselves and our penitentiary, that, in cases where the absolution belongs to us, we may absolve penitents.

(61). Augustin Ep. 149, 16 : Intercessions are made when the people are blessed ; for then the prelates, like advocates, by means of the imposition of hands, present them to the all-merciful Majesty.

(62). Elfric. Hom. 17 Dom. post. Pent. in Thorpe, I. 500 : There is no forgiveness of sins but through the Holy Ghost.

(63). Epist. Clem. 57 : Submit yourselves to the presbyters and receive correction so as to repent. Euseb. III. 23 relates how St. John said to the robber, I will intercede with Christ for thee. . . . But the apostle, pledging himself and solemnly assuring him that he had found pardon for him in his prayers at the hands of Christ, praying on his bended knees, and kissing his right hand as cleansed from all iniquity, conducted him back to the Church. Cyprian, De Laps. c. 16, complains of some being admitted to communion "before their sin is expiated . . . before their conscience has been purged by the prayers made at the sacrifice, and by the hand of the priest." Morinus, De Adm. Poenit. Lib. XIII. 3, shows that the precatory form was used up to the 12th century in both East and West. Apost. Const. II. 41 : So do thou let all join in prayer for the offender. Pseudo-Isidor. ap. Gratian Caus. I. Qu. I. c. 91 : Priests intercede for the people and consume the sins of the people, because by their intercessions they do away with them. Ayliffe 201. The prayer in the Visitation of the Sick, O most merciful God, etc., is the old reconciliatio penitentis ad mortem (in Martene III. c. 15 ; Palmer's Orig. II. 227), which accompanied the imposition of hands. Hence, in the usual form of confession, the Anglo-Saxon for instance in Soames, p. 295, the penitent says at the end : And I pray thee humbly, who art my ghostly father, to intercede for me.

hands is the outward sacramental sign whereby the effect of the Church's prayers is imparted to the individual, it is held by some to be the only sacramental matter (64). Others, again, maintain that since a declaration of absolution has been subjoined to the prayer for forgiveness, this declaration alone without any other outward sign constitutes the sacramental matter (65). It must be remembered that the imposition of hands in penance as formerly practised was twofold. There was (1) the oft-repeated penitential laying on of hands, given by the bishop with uplifted hand to penitents every fasting season, whilst he publicly said over them the prayers called benedictions (66); and there was (2) the reconciliatory laying on of hands (67), which he gave at the close of penance by signing them with the sign of the cross (68). By the

(64). Liebermann, Inst. Theol. VI. 532.

(65). Scotus in 4 Dist. XIV. 4 and Dist. XVI. Qu. I; Maldonatus De Poenit. III. Qu. III. Thes. 7.

(66). Leo, A.D. 458, ap. Gratian I. Dist. L. c. 67: By the imposition of hands they receive the remedy of penance (poenitendi). Stat. Eccl. Ant. A.D. 505, Can. 80: Let hands be laid by priests on penitents every fasting season. Concil. Tolet. III. A.D. 589, Can. 11, quoted below, note 96. See *The Sacraments*, § 25.

(67). Stat. Eccl. Ant. A.D. 505, ap. Gratian Caus. XXVI. Qu. VI. c. 8: Let not penitents who have received the Eucharist in sickness consider themselves absolved without the imposition of hands. Leo, *Ibid.* c. 10; Concil. Araus. A.D. 441, Can. 2, *Ibid.* c. 7: Those who are excluded from the Body whilst undergoing penance may communicate without the reconciliatory imposition of hands, which suffices for the reconciliation of the dying according to the definition of the fathers, who appropriately call such communion the provision for the journey. But if they survive let them remain in the position of penitents. *Ibid.* c. 14; Apost. Const. II. 41: Restore him by imposition of hands to his ancient place among the flock. Stat. Eccl. Ant., Can. 76, says that if a sick man becomes unconscious after asking for penance, he shall be reconciled by the imposition of hands. Concil. Tolet. XI. A.D. 656, Can. 12, directs a priest to give penance to the dying by the imposition of hands, and forthwith to give him reconciliation. See note 101.

(68). Const. 6 Peckham, A.D. 1281: We forbid all such confessors to stretch out their hands for the future to deceive [such excommunicates] by the sign of absolution. This, Thom. Aquin. Pars ult. Sum. Qu. 84, art. 4, says, is signing with the sign of the cross. Lynd. 388.

penitential laying on of hands the benefit of the prayers of the faithful for the purifying effects of penance are communicated to the penitent. By the reconciliatory laying on of hands he is readmitted to communion as one whose forgiveness has been obtained from God by the intercession of the Church.

8. The proper minister of penance is a priest (69), either a bishop or a presbyter—a bishop to give solemn, a presbyter to give private penance. A presbyter may give the penitential laying on of hands to solemn penitents, but he is forbidden to reconcile them publicly (70), and he may give neither imposition of hands to a priest or deacon (71). The ministry of reconciliation being a corporate act effected by corporate prayer, no bishop or presbyter can validly exercise it except one who has jurisdiction (72). Such is the bishop of the see, the dean of a

(69). Ambros. De Poenit. l. c. 1, ap. Gratian, Caus. XXXIII. Qu. III. Dist. l. c. 51: This right is only intrusted to the priests. Theodori Poenit. II. II. 15, in H. & S. III. 192: It is not allowed to a deacon to give penance, but a bishop or a presbyter ought to give it. Concil. Westminster A.D. 1200, Can. 3: A deacon may not give penance.

(70). Concil. Elib. A.D. 305, Can. 32; Concil. Arelat. II. A.D. 442, Can. 26; Concil. Araus. A.D. 441, Can. 1; Concil. Agath. A.D. 506, Can. 44: It is not lawful for a presbyter to reconcile a penitent in church. Concil. Hispal. II. A.D. 619, Can. 9.

(71). Leo, l. c. It is contrary to ecclesiastical discipline that those who are placed in the honour of the presbyterate or the degree of the diaconate should receive the remedy of penance by the imposition of hands, because it is written: If a priest go wrong, who shall intreat for him? (1 Sam. II. 25). Leofric Missal, p. 239: Presbyter reconcilians presbytero manum superponere non debet.

(72). Concil. Lat. IV. A.D. 1215, Can. 22 in Decret. V. Tit. XXXVIII. c. 12; Clement III. *Ibid.* Tit. XXXIX. c. 21; Const. 6 and 8 Peckham, A.D. 1281; Lynd. 337 and 344 enumerates as having jurisdiction: (1) the parochial incumbent, (2) the parish priest and his deputy in spirituals, (3) the pope, (4) the bishop, (5) the bishop's penitentiary, (6) the pope's legate or his penitentiary, (7) the bishop's vicar-general; Lynd. 327, 341, 344. A regular, if in charge of a parish, may by privilege receive confessions, but because he cannot be a prelate by virtue of his profession he cannot be considered a proper priest. Devoti, Lib. II. Tit. II. § 83, observes that all other sacraments may be validly administered by one

cathedral or collegiate church, the incumbent of a parish, the rural dean of a deanery, or an authorised diocesan confessor (73), each only for his respective subjects; in the case of a bishop, the metropolitan (74). All of these may delegate their office to some other priest by consent (75), and no one can choose a confessor without his superior's leave (76), except exempt prelates (77) and bishops who rank as such. In cases of necessity, nevertheless, recourse may be had to any priest (78), not excepting a heretic (79), and in extreme emergency con-

who has order without jurisdiction, but that penance without jurisdiction is a nullity. Lynd. 342 says that a strange priest's absolution has the same effect as a layman's. Perrone Praelect. 200; Hutton's Anglican Ministry, p. 212.

(73). Concil Ebor. A.D. 1195, Can. 17, mentions the general confessor in accordance with the decree of 4th Lateran Council, Can. 22 l. c. Const. 19 Langton, A.D. 1222; Const. 5 Otho, A.D. 1237, direct the appointment of general confessors. Const. 8 Peckham, A.D. 1281; Const. 10 Reynolds, A.D. 1322; Stapeldon of Exeter's Regist. p. 113 shows commissions given in each archdeaconry to certain clergy to hear the confessions of ecclesiastical persons in common cases, and others granted to a few to hear confessions in greater cases.

(74). Concil. Tolet. XIII. A.D. 683, Can. 10: Whatever bishop shall receive penance by the imposition of hands . . . let him be reconciled by the metropolitan.

(75). Const. 5 Winchelsea, A.D. 1305: That priests do not hear confessions unless they do it by leave of the president.

(76). Concil. Lat. IV. in Decret. Lib. V. Tit. XXXVIII. c. 12: If for any just cause he wishes to confess to a strange priest, let him first ask for and obtain leave from his own proper priest, since otherwise the former cannot bind or loose him. Const. 6 Peckham, A.D. 1286, Decret. Lib. V. Tit. XXXIX. c. 29.

(77). Gregory IX. in Decret. Lib. V. Tit. XXXVIII. c. 16, allows bishops and exempt prelates to choose their own confessors, but Boniface VIII. in Sext. Lib. V. Tit. X. c. 2 declares that this permission does not extend to the reserved cases. Const. 5 Winch. A.D. 1305 says not a stipendiary priest, and Const. 8 Peckham, A.D. 1281, says not the common confessors in cathedrals.

(78). Coelestin, A.D. 428, ap. Gratian Caus. XXVI. Qu. VI. c. 12, 13; Theodori Poenit. I. VIII. 5 and I. IX. 7, in H. & S. III. 184, 185: If any priest should refuse penance to the dying he is guilty of souls. Concil. Westminster A.D. 1200, Can. 7.

(79). Augustin ap. Gratian Caus. XXIV. Qu. I. c. 40.

fession to deserve forgiveness may be made to a deacon ([80]), a layman ([81]), or to God only ([82]).

9. A priest is directed to receive a confession with his face and eyes towards the ground, and not to look in the countenance of the penitent; to listen patiently and support him in the spirit of kindness, enjoining him to make a full confession; to ask questions as to common but not as to uncommon sins ([83]), lest he should suggest evil, and never to inquire the names of accomplices ([84]). Whatever is told him under the seal of confession he is forbidden under any circumstances to disclose by signs, nods, or winks ([85]); and if guilty of sin with

(80). Cyprian Ep. 12 (quoted note 30); Ambros. ap. Gratian Caus. XXXIII. Qu. III. Dist. I. c. 51; Const. 1 Langton, A.D. 1223; Const. 12 Edmund, A.D. 1236: We charge that deacons presume not to administer penances or baptism but when the priest is not able. Lynd. 243; Devoti, § 82.

(81). Gratian Caus. XXXIII. Qu. III. Dist. I. c. 88, § 2: If no priest be there, let him confess to his neighbour. Augustin *Ibid.* Dist. IV. c. 36: When shipwreck was impending there was only one Christian on board, and he a penitent. One of the sailors, mindful of his salvation, earnestly prayed to be baptized, and there was no one to baptize him save the penitent. The penitent had indeed received baptism, but had lost his holiness by the sin for which he was doing penance. . . . He accordingly gave what he had received, and then not to pass out of life unreconciled he prayed reconciliation from the sailor whom he had baptized and received it. *Ibid.* Dist. VI. c. 1; Morinus, De Poenit. Lib. VIII. c. 24; Martene, De Antiq. Eccles. Rit. Lib. I. c. 6, art. 6 § 8; Ayliffe, 21. Albertus Magn. in Lib. IV. Sent. Dist. 17 art. 58. Thomas Aquinas in Lib. IV. Dist. 17, Qu. 3, art. 3: In case of necessity a layman can discharge the office of priest, so that confession may be made to him. Joinville, Life of St. Louis, is an instance.

(82). Theodori Poenit. I. XII. 7 l. c. 187: Confession may be made to God only in case of necessity. Concil. Tribur, A.D. 895, Can. 31.

(83). In Cyprian Ep. 30, 7 the necessity for asking questions is stated by the Roman clergy. Lynd. 329 gives the lines suggesting interrogatories:—

> Quis, quid, ubi, per quos, quoties, cur, quomodo, quando
> Quilibet observat, Animae medicamina dando.

(84). Honorius III. in Decret. Lib. V. Tit. XXXI. c. 13, reproduced in Const. 16 Edmund, A.D. 1236.

(85). Egbert's Dial. 15, A.D. 734. Gratian Caus. XXXIII. Qu. III. Dist. VI. c. 2; Decret. Lib. V. Tit. XXXVIII. c. 7 and Tit. XXXI. c. 13; Const. 9 Reynolds, A.D. 1322: Let no priest in any case out of hatred, anger, or

or soliciting a penitent to sin, he is the subject of severest spiritual animadversion.

10. A priest is required in all cases to impose some penance before declaring the forgiveness of sin, because penance is the divinely appointed means of healing from the effects of sin (86). To the dying, however, penance need only be indicated, and reconciliation given forthwith (87). Penances vary considerably

fear, even of death, discover the confession of any man by signs, nods, or words, either in general or particularly. Const. 7 Stratford, A.D. 1342; Lynd. 90 says this applies only to what is told him under the seal of confession, not to communications however secretly made, or even under an oath of reticence at other times, at least not so far as to prevent his disclosing them judicially. *Id.* 334 says that what is told him under the seal of confession he may judicially deny, p. 335, not knowing it as man, but as God's representative, p. 352. Craisson, § 3892, 3901. Liguori Lib. VI. no. 649, however, rightly includes all matters communicated to a confessor out of the confessional bearing on the subject of his confessions, because these form part of the confession.

(86). St. Paul, 1 Cor. v. 4, handed over the incestuous Corinthian to Satan for the chastising of his flesh, as Job was afflicted by bodily suffering for his purification, ἵνα τὸ σῶμα σωθῇ ἐν τῇ ἡμέρᾳ τοῦ Κυρίου. but in the following year, believing the object attained, restored him, because, 2 Cor. II. 6, ἱκανὸν τῷ τοιούτῳ ἡ ἐπιτιμία αὕτη ἡ ὑπὸ τῶν πλειόνων. Cyprian Ep. 30, 31: Remedies of a too hasty kind should not be afforded for communion. Ep. 51, 20 ad Antonian: It is one thing tortured by long suffering for sins to be cleansed and divinely [or for a long time] purged by fire, another to have purged all sins by suffering. Ep. 54, 13 ad Cornelium: Efforts are made that the sins may not be purged with just satisfactions and lamentations, that the wounds may not be washed away with tears. De Laps. c. 17: The servant cannot remit what has been committed against the Lord. . . . The Lord must be appeased by our atonement; . . . c. 18: If any one rashly thinks to rescind the Lord's precept, not only does it not profit the lapsed, but it does them harm; c. 35: A deep wound requires long and careful treatment. Baeda IV. 25, A.D. 730: Adamnan confessed his guilt. The priest having heard his confession, said: A great sin requires much attention in the cure. Therefore give yourself up as far as you are able to fasting, reading of psalms, and prayer. Concil. Cabilon. A.D. 649, Can. 8: Penitentia peccatorum est medela animae. Egbert's Excerpt 20, A.D. 740: That all priests enjoin fit penance to all who confess their crimes.

(87). Theodori ap. Gratian Caus. XXVI. Qu. VII. c. 1: The amount of

by custom. In imposing them the priest should consider within the limits allowed not only the gravity of the sin but also the devotion and compunction of the penitent (88), and then act without respect of persons (89). Since the thirteenth century the rule of the Western Church requires an explicit reference to the power of the keys in reconciling, and enjoins the priest when he thinks fit to loose and not to bind, to grant absolution in a declaratory form (90). This form has, therefore, generally taken the place of the earlier reconciliatory imposition of hands as the sacramental sign.

11. No priest, unless specially authorised, should admit to penance one who is the subject of another (91), nor a stranger (92), but in cases of necessity he may refuse none (93). A confession should always be received in some public place (94), and a woman's in some conspicuous part of the Church, outside the Lenten veil (95). Except for lesser faults, penance ought not to be repeated, but the offender be referred

penance must not be imposed on the dying, but only indicated to them. Concil. Ebor. A.D. 1195, Can. 17 ; Lynd. 290. See note 67.

(88). See note 23 ; Innocent III. in Decret. Lib. v. Tit. XXXVIII. c. 8.

(89). Stat. Eccl. Ant. A.D. 505, Can. 74, ap. Gratian Caus. XXVI. Qu. VII. c. 6.

(90). Const. 2 Othobon, A.D. 1268, directs all who hear confessions to absolve the penitent [when they do loose and not bind, Const. 8 Reynolds, A.D. 1322] by pronouncing the underwritten words : By the authority of which I am possessed I absolve thee from thy sins. Simonatus, De Form. Sacr. Penit. Thesaur. Theol. XI. Opus. 9 ; Martene, De Ant. Rit. Eccl. I. 6, art. 5 ; Devoti Lib. II. Tit. II. § 81 state that early examples exist of a declaration of absolution after the prayer.

(91). Urban II. A.D. 1096, ap. Gratian Caus. XXXIII. Qu. III. Dist. VI. c. 3, and Caus. IX. Qu. II. c. 2 ; Craisson, § 3862.

(92). Const. 8 Reynolds, A.D. 1322 ; Lynd. 279, 331.

(93). Coelestin. ap. Gratian Caus. XXVI. Qu. VII. c. 13 ; Theodori. Poenit. I. VIII. 5, in H. & S. III. 184, and I. IX. 5, *Ibid.* p. 185 ; Poenit. Rom. ap. Gratian Caus. XIII. Qu. II. c. 32 ; Alfred and Guthram's Law 5, A.D. 878 : If one that is to suffer death for his crimes desire shrift, let it never be denied him. Cnut's Law 15, A.D. 1018 ; Const. 2 Othobon, A.D. 1268.

(94). Const. 16 Edmund, A.D. 1236.

(95). Const. 3 Sudbury, A.D. 1378.

back for solemn penance (96). Penitents who die suddenly before being reconciled are allowed to be commemorated in the Eucharistic oblation, provided they have kept the rules of penance (97), but this is forbidden to those who have not come to repentance (98).

12. According to early practice the fulfilment of the imposed discipline was awaited before God's forgiveness or

(96). Origen, Hom. in Lev. 15, c. 2 (II. 262): In greater crimes there is only room for penance once, but in the case of common faults, which we are always committing, we constantly receive penance, and they are constantly being redeemed. Tertullian de Poenit. c. 7; Ambros. ap. Gratian Caus. XXXIII. Qu. III. Dist. III. c. 2: Some there are who think repentance may be oft undergone, and who luxuriate in Christ. But if they had true repentance they would think that it must not be often repeated; for as there is one baptism, so there is one repentance. But we ought always to repent of a sin that is past. I say this of lighter shortcomings. Concil. Tolet. III. A.D. 589, Can. 11: We hear that some, as oft as they wish to sin, demand to be reconciled by a priest. To prevent such execrable presumption the council orders that [in such cases] penance be given according to the canonical form of the ancients, *i.e.*, that one so repenting be suspended from communion, and frequently receive the imposition of hands among the other penitents; and when the time of satisfaction is concluded, let him be restored to communion as the priest in his discretion thinks best. Augustin *Ibid.* c. 18: Let no one think that these greater crimes, the doers of which shall not inherit the kingdom of God, may be daily repeated and daily purged away by almsgiving. *Id. Ibid.* c. 22; Concil. Elib. A.D. 305, Can. 47: If a married man often commit adultery, the communion may be given him when sick, at least if he promise to desist; but if he recovers and breaks his promise, there must be no farther trifling with the communion of peace. See *Discipline*, § 22.

(97). Stat. Eccl. Ant. A.D. 505, Can. 81: Let them carry penitents, if they die, to church and bury them. Can. 79: Penitents who strictly follow the laws of penance, if they chance to die on a journey, or at sea, where they cannot be reconciled, may have their memorial kept, and prayers and offerings made for them. Concil. Vas. A.D. 442, Can. 2; Concil. Arelat. II. A.D. 453, Can. 12; Syn. V. A.D. 553, ap. Gratian Caus. XXIV. Qu. II. c. 6; Halitgar's Penit. *Ibid.* Caus. XXVI. Qu. VI. c. 11; but Innocent III. in Decret. Lib. V. Tit. XXXIX. c. 28, requires a formal absolution in such cases.

(98). Concil. Chelsea, A.D. 787, Can. 20: If any man die without repentance and confession, prayer must not be made for him.

remission (99) was sacramentally declared, and permission was granted to participate in the offering which was called peace (100). Exception was always made in favour of the dying (101), and of those furnished with letters of indulgence from the martyrs (102). Before the introduction of Christianity

(99). Cyprian Ep. 54, 16, calls it remission: I almost sin myself in remitting sins more than I ought. De Laps. 29.

(100). Cyprian Ep. 58 (Oxf. 64): Peace should not be granted before the legitimate and full time of satisfaction; Ep. 66 (Oxf. 68), 5: Our predecessors judged that when penance had been undergone the reward of peace and communion was not to be denied to the lapsed. De Laps. c. 15; Concil. Elib. A.D. 305, Can. 77, 79; Concil. Ancyr. A.D. 314, Can. 4; Concil. Nic. A.D. 325, Can. 11. Innocent I. A.D. 416, ad. Decentium, c. 8: To penitents all sacraments are forbidden. Concil. Brac. A.D. 572, Can. 82: He will not receive the sacrament until he has fulfilled the appointed time of penance. Relaxation appears to have been first introduced at Constantinople, where Sozomen VII. 16, says: He gave absolution to penitents who confessed and undertook to exact penance of themselves. Theodori Poenit. I. XII. 4, A.D. 673, in H. & S. III. 187: Penitents, according to the canons, ought not to communicate before the completion of penance. But we out of mercy grant them leave after a year or six months.

(101). Cyprian Ep. 10 and 52, 2; Concil. Carthag. II. A.D. 390, Can. 4, ap. Gratian Caus. XXVI. Qu. VI. c. 5: If any one is in danger and asks to be reconciled to the divine altars, the priest ought to consult the bishop if he is away, and reconcile him by the bishop's direction. Euseb. VI. 44 considers the reception of the Eucharist the absolution itself. The boy, he says, dropped the Eucharist in the old man's mouth, and he expired. Was he not evidently preserved, and did he not continue living until he was absolved? Concil. Gerund. A.D. 517, Can. 9, ap. Gratian 1, Dist. L. c. 57: If any one overcome by sickness has received by means of communion the benediction of penance which we call the viaticum. Concil. Tolet. XI. A.D. 656, Can. 12, directs a priest, when there is danger of death, to give penance by the imposition of hands, and at once to give reconciliation [sc. the viaticum]. Concil. Epaon. A.D. 517, Can. 36: The appointed times of exclusion (damnationis tempora) must be relaxed to the dying; Leofric Missal, 194.

(102). Cyprian Ep. 12 and 59. Ep. 12 quotes such a letter: All the confessors to Pope Cyprian greeting. Know that to all concerning whom an account satisfactory to you has been given of what they have done since the commission of their sin, we have granted peace [*i.e.*, admission to communion], and we desire that this rescript should be make known

into this country, the ancient discipline had been so far relaxed that sacramental forgiveness and readmission to communion were allowed after a comparatively short time (103), sometimes after one or two years, at other times after twelve or six months (104). Even solemn penitents were temporarily reconciled to receive the communion on Easter day (105). Those thus indulged were not held discharged from their penitential status, nor were they allowed to make an offering until at the end of their term they had received the final reconciliation (106). At a later period restoration to communion was,

by you to other bishops also. De Laps. 31 complains of the abuse of this privilege; Devoti Inst. Lib. II. Tit. II. § 80.

(103). Leo, A.D. 458, ap. Gratian Caus. XXVI. Qu. VII. c. 2: If any one takes it so much to heart, that whilst he is a penitent his salvation is despaired of, the grace of communion ought to be granted to him by the tender care of the priest. Concil. Herd A.D. 542, Can. 5, *Ibid.* 1, Dist. L. c. 52: Let it be in the bishop's power to suspend, but not for long, such as truly grieve, and to separate the remiss from the body of the Church for a longer period. Egbert's Excerpt 39, A.D. 740, following Theodore (quoted note 100): According to the canons, penitents ought not to communicate before they have finished their penance; but we for the mercy of a compassionate God do grant licence to some after a year or two or three. Nicolaus, A.D. 865, ap. Gratian Caus. XXXIII. Qu. II. c. 15, allows a matricide to communicate after ten years, but not to make an offering till the end of his term of penance. Thorpe II. 266: Let the priest watch attentively with what compunction of heart, and with what exactness of performance the penance is fulfilled, and judge from that whether he ought to grant him forgiveness or not. Devoti., § 80; Lynd. 264, 328.

(104). Theodori Poenit. I. XII. 4, l. c. 187; Egbert's Excerpt 39, A.D. 740.

(105). Innocent, A.D. 416, ad Decentium ap. Gratian III. Dist. III. c. 17: Penitents undergoing penance either for greater or for lesser offences, even if they are not ill, the custom of the Roman Church requires to have remission on Maundy Thursday. Concil. Cabil. II. A.D. 813, *Ibid.* III. Dist. II. c. 17: Even penitents are reconciled on Maundy Thursday to receive the sacraments of the Lord's Body and Blood. Dunstan's Can. 15, A.D. 963: Again on the Thursday before Easter all the penitents meet at the same place, and there the bishop sings over them and gives them absolution. The form of reconciliation in Leofric's Missal, 92.

(106). See note 67.

with certain exceptions (107), allowed, directly confession had been made, and the offender had undertaken to perform the penance imposed, or as it was said had come to satisfaction (108).

PENANCE AS THE DISCIPLINE OF RECONCILIATION—SHRIFT.

13. Before any one can obtain forgiveness of sins or deliverance from its punishment, either sacramentally in the court of penance (109), or non-sacramentally in the court of the soul, penitence is necessary as an antecedent condition (110). Penitence has been therefore called the mistress of all virtues (111), because it involves a change of mind and a return to a right understanding in divine things (112). It consists in a deep consciousness of the heinousness of past sins, coupled with a true love of God and a desire for amendment (113). Hence it

(107). Alfred and Guthrum's Law 4, A.D. 878; Concil. Ensham A.D. 1009, Can. 25; Const. 5 Clarendon, A.D. 1164: Excommunicates ought not to give security or to make oath for the remainder, but only to give security and pledge for standing to the judgment of the Church, that they may be absolved Alexander II. ap. Gratian I. Dist. LXXXI. c. 16, suspends a priest "until he come to satisfaction." Alexander III. in Decret. Lib. v. Tit. XVIII. c. 5, allows a man to be ordained after performing penance, or an adequate part of it, for stealing. Const. 18 Stratford, A.D. 1343.

(108). Concil. Cabil. A.D. 813, ap. Gratian III. Dist. II. c. 17: Except to those to whom it is forbidden, because of grave crimes. Concil. Turon, A.D. 850, *Ibid.* c. 16: Unless perchance he be hindered by greater crimes. Const. 4 Sudbury, A.D. 1378: Unless he think he ought to abstain by the advice of his priest.

(109). Urban III. in Decret. Lib. v. Tit. XIX. c. 10, calls it judicium animarum. Const. 1 Peckham, A.D. 1281; Const. 12 Stratford A.D. 1342; Lynd. 90 says that a man's own word is to be believed in the court of the soul when it would be insufficient in foro contentioso. Lynd. 248, 337, 233, 344, 332.

(110). Lynd. 236, 337; Liebermann VI. 573: Contritio est ipsa virtus poenitentiae.

(111). Chrysost. Hom. 23 in Math.

(112). Lactantius VI. 24.

(113). Tertullian de Poenit. c. 2 says: Penitence can only be brought to bear on sins, not on good deeds. This excludes the common definition,

necessarily involves three things—primarily, repentance or sorrow for sin, and secondarily, confession, and satisfaction (114). These three things are accordingly called the quasi-proximate matter in penance (115), and are said to be integral parts of the sacrament (116). In like manner sins are spoken of as the quasi-remote matter, because they are the matter to be removed by the sacrament (117).

14. Repentance or sorrow for sin, which is necessary *de necessitate medii* as the primary condition for receiving any benefit from the sacrament, is of two kinds (118): (1) Perfect sorrow for sin (119), which arises from full-formed faith, and is generally called contrition of heart; and (2) imperfect sorrow

The sincere exercise of memory upon our past existence, as too wide. Augustin, de Vera et Falsa Poenit. c. 9 ; Liebermann VI. 484 says that penitence involves (1) a recognition of past sins ; (2) a change of purpose ; (3) grief of mind ; and (4) submission to punishment.

(114). Cyprian de Laps. c. 16, quoted note 63, requires confession and satisfaction. Chrysost. ap. Gratian Caus. XXXIII. Qu. III. Dist. l. c. 40, and Dist. III. c. 8 : In the heart contrition, in the mouth confession, in action perfect humility. Pet. Lombard, Lib. IV. Dist. 16 ; Thomas Aquin. 3 Qu. 90, art. 2 and 3 ; Lynd. 337 says : In the court of the soul contrition acts as the citation ; confession as pleading guilty before the judge ; satisfaction is the judge's sentence. Lynd. 28, 328 : Contrition is necessary *de necessitate medii*, the two other parts *de necessitate praecepti*.

(115). Eugenii IV. Decret. ad Armenos, A.D. 1439 ; Concil. Trident. Sess. XIV. c. 3 : Sunt autem quasi-materia hujus sacramenti ipsius penitentis actus, nempe contritio, confessio et satisfactio. Liebermann VI. 537, 541 : The penitent in a way supplies the matter by offering the three acts to the priest, which the latter receiving and combining with the form elevates to the dignity of a sacrament.

(116). Liebermann VI. 540.

(117). Tertullian de Pudic. c. 2 : The causes of penitence are sins.

(118). 2 Cor. VII. 10 : Godly sorrow worketh an irrevocable (*ἀμεταμέλητον*) repentance [leading] to salvation, but the sorrow of the world worketh death.

(119). Chrysostom ap. Gratian l. c. c. 40. Augustin *Ibid.* 1, Dist. XLV. c. 13 : There are two kinds of almsgiving—one of the heart, the other of money. Theodori Poenit. I. VIII. 5, in H. & S. III. 184 : Conversion may be at the last moment of time, because God regards the heart and not time, as the dying thief by one moment's confession deserved to be in Paradise.

for sin or compunction (120), which arises from unformed faith, and is called attrition (121). Perfect contrition is such a sorrow for and detestation of sin as arises from perfect love of God (122), and leads to complete amendment and an entire forsaking of sin for the future (123). Imperfect contrition or attrition is the uneasiness which arises from a consideration of the turpitude of sin and the fear of consequences (124), and unless it disposes the sinner to seek God's grace by some tangible exercise of self-discipline, it does not initiate holiness (125), neither does it come within the range of the court of penance.

15. Where there is perfect contrition of heart the sinner is reconciled upon confession to God only (126). In such cases

(120). Isidor. Sent. II. 12, 1 : Compunction of heart is lowliness of mind, coupled with tears, arising from the memory of sin and the fear of judgment.

(121). Hales IV. Qu. 74, art. 1 : Servile fear is the beginning of attrition, initial fear (*i.e.*, that with which the life of holiness begins) of contrition. . . . Again contrition is produced by sanctifying grace, attrition by grace qualifying for sanctification. Concil. Trident. Sess. IV. c. 4.

(122). Gratian Caus. XXXIII. Qu. III. Dist. II. c. 2–14, 18, 19 ; Lynd. 236.

(123). Ambros. *Ibid.* l. c. Dist. III. c. 1, and Dist. l. c. 39 : Repentance consists in bewailing past sins, and not again repeating such as must be bewailed. Smaragdus *Ibid.* c. 9 : Repentance consists in such a sorrow for past sins as leads to not committing them in future. Gregory *Ibid.* c. 14 : He who bewails what he has committed but does not forsake it, incurs almost greater guilt. Hieronym. *Ibid.* c. 38 : That repentance was of no use to Judas by which he could not correct his sin. Concil. Chelsea A.D. 787, Can. 20 : A fruitful repentance consists in bewailing misdeeds, and not committing them again.

(124). Hales l. c.

(125). Tertullian de Poenit. c. 2 : Where there is no fear there is no amendment. Iren. Haer. III. 23, 5 : The sense of sin leads to repentance. God bestows His compassion upon those who are penitent. Augustin ap. Gratian, Caus. XXXIII. Qu. III. Dist. VII. c. 6 : He is turned from sin who wishes to forsake sin ; he is converted who is turned wholly and altogether, who not only does not fear punishment, but also hastens to work for the good of his Lord. Const. 9 Peckham, A.D. 1281 : He loves God who keeps the commandments out of love, not out of fear of punishment. Craison, § 3792.

(126). 1 John I. 9 : If we confess our sins, He is faithful and just to

sacramental confession is necessary only in obedience to a precept ([127]) where such exists. But since, in the vast majority of cases, contrition is imperfect ([128]), and few persons are exempt

forgive us our sins. Iren. IV. 17, 2 : The sacrifice to God is an afflicted heart. A sweet savour to God is a heart glorifying Him who formed it. Clem. Pacdag. III. 12 ; Cyprian de Laps. 9, 36 : If man make prayer with his whole heart, if he groan with true lamentation and tears of repentance, if he incline the Lord to pardon of his sin, to righteous works, He who expressed His mercy may pity such a man. . . . He can mercifully pardon. . . . He can regard as effectual whatever in behalf of such either martyrs have besought or priests have done. Hieronym. ap. Gratian Caus. XXXIII. Qu. III. Dist. l. c. 73 : If any one after a lapse into sin turns to true repentance, he will speedily obtain pardon from a merciful Judge. *Ibid.* Dist. VI. c. 1 ; Isidor. Sent. II. 13, 1 : From that moment any one begins to be a just man when he becomes an accuser of himself. Syn. VIII. A.D. 869, *Ibid.* Caus. XXVI. Qu. VII. c. 9 : One who is penitent in heart ought to be received, as the Lord shows when He says that He called His friends and neighbours together, saying, Rejoice with Me. Blickling, Hom. I. 272 : God is so merciful that He will show mercy to him who turns from sin, if with inward sorrow of heart he turn to true repentance. Ayliffe 20.

(127). Theodori Poenit. II. XII. 7, in H. & S. III. 187 : Confession may be made to God only if it is necessary. The word necessary is not in all copies of the canons. *Id.* ap. Gratian Caus. XXXIII. Qu. III. Dist. l. c. 90 : Some say sins ought to be confessed to God only, as do the Greeks ; others that they ought to be confessed to the priests, with whom almost the whole Catholic Church agree. Yet both kinds of confession are not practised within the Church without great benefit, *i.e.*, that we confess our sins to God, who forgives sin. . . . Nevertheless, the apostles' rule is also to be followed, that we confess our sins to one another, and pray for one another, that we may be saved. Therefore confession which is made to God only, which is that of the righteous, purges sin, but that which is made to the priest shows how sins ought to be purged. For God, who is the author and giver of salvation and holiness, often bestows this medicine of His penitence by direct administration, often by the intervention of [spiritual] physicians. Lynd. 236 : The necessity of confessing after contrition is not because of the need of the remedy, but because of the existence of the precept. The Copts in the 12th century abolished the practice of confessing, on the ground that the prayer of the morning incense, or interior repentance before a burning censer, conveyed sacramental absolution.

(128). Augustin ap. Gratian l. c. Dist. VII., c. 6 : Quoniam vero rara est tam justa conversio.

from mortal sin (129), confession before God's minister (130) and satisfaction are with most men ordinarily necessary, both to test the genuineness of their repentance (131), and also to perfect it by the prayers of others. It was accordingly prescribed in the West in the 13th century that every Christian who had reached years of discretion should at least once a year confess to his own proper priest, or by his leave to a

(129). Cap. 31 Theodulf, A.D. 994 : There are eight capital sins, and there is but a small number of men that is not stricken by some or all of them. Lynd. 232.

(130). Ep. Barn. c. 19 : Thou shalt confess the sin ; thou shalt not go to prayer with an evil conscience. Tertullian de Poenit. c. 9 : Confession of sins lightens as much as dissimulation aggravates them, for confession is counselled by satisfaction. . . . In this act we confess our sins to the Lord, not as if He were ignorant of them, but because by confession satisfaction is settled, by confession repentance is born, by repentance God is appeased. Cyprian de Laps. c. 28 : How much better are they . . . who, although bound by no crime, yet because they have thought of such things, with grief and simplicity confess the very thought to God's priests and make the conscientious avowal . . . and seek out the salutary medicine even for slight and moderate wounds? Euseb. v. 18 speaks of "the great characteristic of confession." Ambros. ap. Gratian Caus. XXXIII. Qu. III. Dist. 1. c. 39 : He does not deserve to be justified who refuses in this life to confess his sins. Augustin *Ibid.* Dist. 1. c. 88, and Dist. VI. c. 1 : So great is the efficacy of confession, that if no priest can be had confession may be made to a neighbour. Dunstan Can. 1, A.D. 963 : Without confession there is no forgiveness. Concil. Clovesho, A.D. 747, Can. 22, warns people not to be careless in confessing. Const. 18 Boniface, A.D. 1261 : Confession is necessary for every sinner. Cap. 31 Theodulf, A.D. 994, ap. Gratian Caus. XXII. Qu. 1. c. 17 ; Lynd. 236 : Although before Christ's incarnation mental confession made to God only sufficed, yet since God has become man confession ought to be made with the voice to man as the vicar of Christ. 327, 328 : As the eternal Word so humbled Himself to expiate our sins as to take upon Himself human nature, so He bound us to humble our words by speaking against ourselves to man as well as to God. Craisson, § 3816.

(131). Augustin ap. Gratian Caus. XXXIII. Qu. III. Dist. 1. c. 88, says shame is a test of contrition. *Id. Ibid.* 1. c. Dist. 1. c. 85 : Let a man judge himself . . . and when he has pronounced sentence on himself of the severest remedy let him come to the priests by whom these keys are ministered in the Church, and let him receive the measure of his satisfaction [penance] from those who preside over holy things. Lynd. 321.

stranger (132). Nevertheless it has been held that this rule is not imperative on those who are only guilty of venial sins (133).

16. To be of use a confession must be a thorough and truthful acknowledgment of sin (134), *i.e.*, it must be (1) full and complete, (2) circumstantial and not general, and (3) confined to the sinner's own sins, and not mentioning those of others. Formerly a confession was made sitting (135), as is still the custom of the Greeks (136). Afterwards it appears to have been made standing (137). The practice of kneeling is said to have been introduced by the monks in the thirteenth century (138). A complete confession should, so far as memory goes, enumerate without reserve (139) all mortal sins committed since baptism, but not necessarily venial sins, because these are remitted in other ways (140). It should include sins of thought

(132). Concil. Lat. IV. A.D. 1215, in Decret. Lib. v. Tit. XXXVIII. c. 12: Let every one of the faithful of either sex, after reaching years of discretion, alone faithfully confess all his sins, at least once a year, to his own priest, and study with his own powers to perform the penance imposed on him. . . . Otherwise let him whilst alive be excluded from entrance to the Church, and when dead be deprived of sepulture. Const. 14 Sudbury, A.D. 1378.

(133). Liguori Lib. VI. no. 667; Craisson, § 3807.

(134). It is therefore called exomologesis by Iren. I. 13, 5 and 7; I. 6, 3; III. 4, 3. Tertullian de Poenit. c. 9: Exomologesis is a discipline for man's prostration and humiliation.

(135). Martene de Antiq. Rit. Lib. I. c. 6 art. 3; Devoti, Lib. II. Tit. II. § 70.

(136). Leo Allatius de Consens. Eccl. Occid. et Orient. Lib. III. c. 9, § 6.

(137). Dunstan Can. 4, A.D. 963: Let the man rise to his shrift.

(138). Martene l. c.; Devoti, § 70.

(139). Augustin ap. Gratian Caus. XXXIII. Qu. III. Dist. IV. c. 1 says, "exposing his whole self" (nihil sibi reservans sui). Cap. 31 Theodulf, A.D. 994: A man ought to confess to the shrift all the sins that he ever committed, either in word, work or thought. Concil. Lat. II. A.D. 1139, *Ibid.* c. 8: It is false penitence to do penance for one single offence, overlooking all the rest. Const. 16 Edmund, A.D. 1236: Enjoining him to make a full confession.

(140). Augustin ap. Gratian Caus. XXXIII. Qu. III. Dist. III. c. 20; Craisson, § 3773.

as well as of word and deed, sins against faith, against God's commandments and the precepts of the Gospel, the neglect of works of mercy, any capital crime, and all shortcomings in respect of the principal virtues and the sacraments of the Church (141).

17. It should, moreover, be particular and not general, specifying the circumstances of every excess, or at least those circumstances which tend to aggravate it; the nature, place, and cause of the sin and the time of continuing in it (142); and instead of being a barren recital made before a listless auditor it should be an act of self-accusation (143) made before God in the presence of His priest and the whole company of heaven (144). It should, however, refrain from mentioning the sins of other men, or giving the names of persons with whom the

(141). Dunstan Can. 4, A.D. 963: After this let the man first say: I believe in the Lord, the supreme Father, the Governor of all things, and in the Son, and in the Holy Ghost; and I believe life after death, and I believe that I am to rise again at Doomsday; all this I believe shall come to pass through God's power and mercy. And then meekly bowing to his shrift with contrition, let him humbly rehearse his confession and say: I confess to Almighty God and to my shrift, the ghostly physician, all the sins with which I was ever defiled by accursed spirits, either in deed or in thought. . . . I beg of my Lord forgiveness of all, and that the devil may never insidiously surprise me so that I die without confession and satisfaction for my sins. . . . And Thou, O Saviour Christ, be merciful to my soul, and forgive my sins and blot out my guilt . . . and bring me to Thy heavenly kingdom. Now I humbly beseech thee, O priest of the Lord, that thou be my witness at Doomsday . . . and be thou my intercessor with God, that I may satisfy for my sin and guilt and abstain from other such like. Const. 9 Peckham, A.D. 1281, gives the order of confession as in the text, and Lynd. 328 recommends it as the proper order.

(142). Augustin ap. Gratian Caus. XXXIII. Qu. III. Dist. V. c. 1; Const. 8 Reynolds, A.D. 1322.

(143). Dunstan Can. 1, A.D. 963: When any one will confess his sins let him act like a man, and not be ashamed to acknowledge his wretchedness and crimes by accusing himself, because from thence springs pardon. Devoti, Lib. II. Tit. II. § 69.

(144). Rabanus, A.D. 853, ap. Gratian I. Dist. L. c. 34: by private confession before the eyes of God in the presence of His priest, who will prescribe penance to them.

penitent has sinned (145), not even doing so for the sake of obtaining their amendment (146). In a dying man signs of repentance may be taken for a full confession and reconciliation granted as often as they are shown (147).

18. Confession must be followed by satisfaction (148), which may be defined to be the humble submission to the discipline of severity rendered necessary by the circumstances of the excess or sin. Properly satisfaction includes three things: (1) atonement or satisfaction to God for the guilt of sin (*reatus culpae*) which places man in a state of enmity to God and therefore entails on him eternal punishment (149); (2) amend-

(145). Alexander III. in Decret. Lib. v. Tit. XVI. c. 5; Const. 8 Reynolds, A.D. 1322.

(146). Craisson, § 3827.

(147). Stat. Eccl. Ant. A.D. 505, Can. 76, ap. Gratian Caus. XXVI. Qu. VI. c. 8: If one when taken ill asks for penance, and becomes dumb and loses consciousness before the presbyter arrives, let those who heard him ask bear testimony, and let him receive penance, and if he is like straight to die let him be reconciled by the imposition of hands, and the Eucharist be passed into his mouth. Craisson, § 3818.

(148). Pseudo-Augustin ap. Gratian Caus. XXXIII. Qu. III. Dist. v. c. 1: Let him place himself entirely in the power of the judge, in the hand of the presbyter, so as to be ready to do at his bidding everything to repair the life of the soul. Chrysost. ap. Gratian Caus. XXXII. Qu. I. c. 4, mentions the satisfaction of penance. Alfred and Guthrum's Law 4, A.D. 878: As to incestuous persons the wise men have decreed that the king have the better of them, the bishop the worse, unless satisfaction be made both towards God and towards the world. Edgar's Law 65, A.D. 960: That every priest teach penance and satisfaction. Can. 7 Dunstan, A.D. 963; Concil. Ensham, A.D. 1009, Can. 25: If murderers or perjurers have the audacity to remain in the king's presence before they have begun their satisfaction towards God and the world, let it be at the peril of their honour and all their estate. An Anglo-Saxon document in Lingard's Church I. 332: By confession the venom is extracted; it now remains for the leech to prescribe the manner of cure. Const. 44 Langton, A.D. 1222; Const. 35 Edmund, A.D. 1236: Let them be struck with anathema by the chaplains of the places until they make fit satisfaction. Const. 9 Boniface, A.D. 1261; Const. 12 Othobon, A.D. 1268; Lynd. 164, 210, 231, 232, 259, 264, 295.

(149). It must be remembered (1) that sin not only places the sinner apart from God (Iren. Haer. II. 33, 5; v. 28, 1), which is called death

ment or satisfaction to God's justice for the injury done to holiness (*reatus poenae*) which requires temporal punishment to undo it; and (3) restitution or satisfaction to man when any one has been injured by the excess or sin. Satisfaction to God for the guilt of sin is made only by the merits and obedience of Christ (150), and not by any act of the sinner; but satisfaction for the temporal punishment required to undo the

(Iren. v. 27, 2), viz., eternal death, by the guilt or hostility to God which it creates, but also entails punishment as a consequence to meet the requirements of God as a God of justice (Math. XVI. 27; Rom. II. 6; Rev. XXII. 12); (2) that in justification God's mercy as revealed in Christ draws the sinner back to God, and does away with the relation of enmity or guilt of sin and separation from God, which is eternal death; (3) that ordinarily only the baptismal forgiveness does away entirely with the punishment due to sin, but that post-baptismal forgiveness transforms eternal into temporal punishment, still leaving temporal punishment to be undergone or satisfaction to be made, either in this world or the next, to undo the effects of sin. Thus in 2 Sam. XII. 13 Nathan said unto David: The Lord hath put away thy sin: howbeit, because by this deed thou hast given occasion to the enemies of the Lord to blaspheme, the child shall surely die. Cyprian de Laps. c. 17: God alone can bestow pardon for sins which have been committed against Himself, but the Lord must be appeased by our atonement. *Ibid.* c. 14: It behoves the Lord's priest not to mislead by deceiving concessions, but to provide with salutary remedies. Augustin in Joan. Tract 124: Man is obliged to suffer even after his sins have been forgiven, although the cause of his coming into that plight was sin. Gregory Mor. IX. 34: In nowise is sin spared because it is never forgiven without punishment. Thus David deserved to hear after his confession, The Lord, etc.—and yet afflicted with many torments he often paid the debt of the sin which he had committed. Augustin ap. Gratian Caus. XXXIII. Qu. III. Dist. III. c. 7: Penance is more productive than guilt, lest guilt should be thought too little of, if with it punishment were at an end. And thereby either to demonstrate the misery due [to sin], or to amend the life apt to fall, or to exercise the necessary patience a man is temporarily amenable to punishment who is no longer amenable to guilt for eternal damnation.

(150). Iren. Haer. v. 2, 1.: As far as concerns the apostasy, Christ redeems us righteously from it by His own blood; III. 18, 6: Christ was man contending for the fathers, and through obedience doing away with disobedience completely; v. 17. 1: The Lord has restored us to friendship through His incarnation, 3: If none can remit sins but God alone, it is plain that Christ was the Word of God.

effects of sin and restitution are both necessary on man's part, or his repentance itself is vain and ineffectual (151).

19. Satisfaction is made to God for the injury done to holiness which requires temporal punishment to correct it, (1) by bearing patiently the ills and trials sent by Him in this life (152), and (2) by voluntarily submitting to penances, such as fasting and almsgiving (153). It may also be vicariously made by the prayers or suffrages of others, in so far as these intensify contrition and amendment. Penances imposed by the Church, which are one form of satisfaction, vary according to the rule and custom of each particular part of it, and are adapted to the special needs of places and people (154). Formerly, out of regard for God's justice, long and severe penances were awarded by the Church, in the hope of forestalling future by present suffering (155). Now, without attempting to adjust the scale

(151). Tertullian de Poenit. c. 2: Where there is no amendment repentance is vain, for it lacks the fruit for which God sowed it, viz., man's salvation [*i.e.*, deliverance from the penalty and the power of sin].

(152). Cyprian de Mort. c. 13, says it is a test of a Christian spirit to take suffering patiently. See note 86. Penances are made formally satisfactory, either by being enjoined by a confessor or by a voluntary acceptance of them in a spirit of penitence.

(153). Tertullian de Poenit. c. 9: Penance, by itself pronouncing against the sinner, hopes to stand in the stead of God's indignation, and by temporal mortification to discharge eternal punishment. Cyprian de Glor. Mart. c. 13: It is written, we must pay the uttermost farthing; martyrs only are relieved from this obligation. Augustin ap. Gratian Caus. XXXIII. Qu. III. Dist. 1. c. 63: It avails not to change habits for the better, and to depart from past evil, unless satisfaction is made to God by penitential grief, by humble lamentation, by the sacrifice of a contrite heart aided by fasting and thanksgiving. Concil. Cabilon. A.D. 649, Can. 8: Penance for sins is the medicine of the soul. Ambros. Lib. VII. in Luc.: By works of charity and other acts, or by any kind of satisfaction, the [temporal] punishment of sin is dissolved.

(154). Concil. Carthag. III. A.D. 397, ap. Gratian Caus. XXVI. Qu. VII. c. 5; Leo, *Ibid.* c. 2. See note 23.

(155). Tertullian de Pudic. c. 2: Albeit God is good, yet He is just also. Hieronym. ap. Gratian Caus. XXIII. Qu. V. c. 6: They who are punished in this life shall not be punished afterwards; for God will not avenge twice, as it is written. Gregory *Ibid.* I. Dist. XXV. c. 4: As each

of suffering between this life and the next, the practice is to bestow sacramental forgiveness on all who confess sin, so soon as the desire to forsake it is manifest ([156]), and some discipline imposed *ex misericordia* rather than *ex debito* has been submitted to, partly because confession is itself a severe discipline and sign of amendment, partly because penances are more productive of good which are done by one who is in a state of grace.

20. Whenever an injury has been done to another, satisfaction must also be made to the injured person ([157]), either by

man leaves this life, so he will be presented in judgment. Yet, in respect of certain lesser faults, it must be believed that there will be a purifying fire before judgment, because the Truth says, Whosoever shall blaspheme against the Holy Ghost, it shall neither be forgiven him in this world nor in the world to come. By which we are given to understand that certain faults are remitted (culpas laxari) in this life and others in the life to come. . . . Yet, as I have said, this only applies to lesser sins. Pseudo-Augustin *Ibid.* c. 5: He who puts off the fruit of conversion to another life will be first purged by the fire of purification. This fire, although it be not eternal, is nevertheless very severe. *Id. Ibid.* Caus. XXXIII. Qu. III. Dist. VII. c. 6, § 2. Augustin Enchirid. c. 66: Much evil may seem here to be overlooked, and without all punishment released, but the pain for such things is reserved for the world to come. Concil. Aquisgranum II. ad Pepin. ap. Lab. et Coss. VII. 1729: The sins of men are avenged in three ways, in two ways in this life, in the third in a future life: (1) If we judge ourselves we shall not be judged. This is the vengeance to which, by God's inspiration, the sinner voluntarily submits in penance. (2) If we are judged, we are corrected by the Lord that we may not be condemned with this world. This is the vengeance which the Almighty God mercifully inflicts on the sinner. (3) The third judgment is most to be dreaded, when the just Judge shall say, Depart from Me, ye cursed.

(156). Alexander III. in Decret. Lib. v. Tit. XXXVIII. c. 5, directs penance to be enjoined on one who declines to forsake sin, although absolution cannot be given. Const. 16 Otho, A.D. 1237; Const. 8 Reynolds, A.D. 1322: He who confesseth his sin, and yet will not abstain from it, to him absolution cannot be given; for we never read of pardon conferred on any without reformation. Const. 13 Stratford, A.D. 1343; Const. Chichele, A.D. 1430; Lynd. 150, 264, 265.

(157). Theodori Poenit. I. III. 3, in H. & S. III. 179: He who stole must always be reconciled to the person whom he offended, and restore the damage done to him, and it will greatly abbreviate his penance. If he either will not or cannot do so, let the appointed time of penance be done in full (manet per omnia). Augustin ap. Gratian Caus. XIV. Qu. VI. c. 1:

restitution or by compensation (158), for the sin is not forgiven until what has been taken away is restored (159). On this ground, public offences in the Church are visited with public punishment, and reconciliation is refused until public punishment has been undergone, although the offender may be perfectly contrite. Moreover, since absolution, whenever an injury has been done to another, is void without restitution either in act or intention (160), a promise of restitution made to obtain absolution is a sacred trust which descends to the heirs of one deceased (161).

21. The sacramental effect (162) of the discipline of penance,

This I would most confidently say, that he who interposes to prevent another's restoring what he has wrongfully taken away, or does not oblige him to do so if he takes shelter with him, is an accomplice of his fraud and crime. *Id. Ibid.* Qu. v. c. 15; Const. 33 Langton, A.D. 1222: Let him be excommunicate who, for the future, receives the goods of the Church and detains them after admonition, and not be absolved till he make restitution. Const. 35 Edmund, A.D. 1236: Let them not be admitted to absolution unless they make satisfaction. Const. 8 Reynolds, A.D. 1322; Rule 4 in Sext. Lib. v. Tit. XII. c. 5; Gregory VII. ap. Gratian Caus. XXXIII. Qu. III. Dist. v. c. 6: He who . . . detains unjustly the property of another, let him realise that he cannot come to true repentance . . . unless he restores what he has taken unjustly. Lynd. 333 observes that restitution is often required in foro animae, when it cannot be enforced in foro contentioso—as from a hypocrite who has made money by pretending to be a good Christian, from a gambler unlawful gains, rights acquired by statutes of limitations through no fault of the loser's or by the ignorance of a judge, debts confessed for no consideration. Lynd. 332, 338, 346, 11, 264.

(158). Gregory ap. Gratian Caus. XIV. Qu. VI. c. 2: Since what has been consecrated cannot [in this case] be restored, let it be your care that the bishop compensate for the value. Augustin *Ibid.* Qu. v. c. 15, says there are cases in which what has been improperly taken need not be restored, as a bribe to do wrong. Lynd. 322, 332, 278 says that by the custom of England a corpse can be attached for debt.

(159). Augustin ap. Gratian Caus. XIV. Qu. VI. c. 1; Alexander III. in Decret. Lib. v. Tit. XIX. c. 5; Rule 4 in Sext.; Const. 8 Reynolds, A.D. 1322.

(160). Lynd. 333.

(161). Lynd. 290.

(162). Cyprian Ep. 79 (Oxf. 43), 3: Heretics take away repentance, and teach that the Lord should not be appeased through bishops and pres-

when offered to God with the prayers of the Church, is twofold (163): (1) It unlooses the bond of guilt, and procures for the offender God's forgiveness, restoring him to life (164) and the forfeited state of salvation (165); (2) It unlooses the bond of punishment, in all cases doing away with eternal punishment (166), and only retaining temporal punishment as

byters. De Laps. c. 29: Let each one confess . . . while the satisfaction and remission made by the priests are pleasing to the Lord. Firmilian ad Cypr. Ep. 74 (Oxf. 75), 4: Not as though they obtained forgiveness of sins from us, but that, by our means, they may be converted to the understanding of their sins, and may be compelled to give fuller satisfaction to the Lord. It was held by Peter Lombard and the older Schoolmen that unless there is true contrition of heart sacramental absolution is unavailing. The view now generally taken is that confession, penance, and the prayer of the priest have, through the power of the Holy Ghost, a sacramental effect, and intensify attrition so as to deserve forgiveness. Morinus states that the declaratory form of absolution was introduced to emphasise the latter view. Ayliffe 19: 'Tis certain that our Saviour left power in His Church to absolve men from their sins, but it was founded upon repentance. Liebermann Inst. Theol. VI. 550. See note 15.

(163). Iren. III. 18, 2: As it was not possible that man, who had been destroyed by disobedience, could reform himself, or that he could obtain salvation who had fallen under the power of sin . . . the Son effected both these things. Tertullian de Poenit. c. 6: Whilst pardon is in abeyance there is prospect of penalty. Augustin Serm. II. in Psal. ci.: When thou hearest a man expose his conscience in confession, he is already brought forth from the tomb. When, and by whom, is he unloosed? It is written, "Whatsoever things ye shall bind upon earth," &c. In the Anglo-Saxon rite, ap. Soames 296, the priest prays: [1] Overlook the sins of penitents; and [2] graciously grant discharge from penance (indulgentiam) and peace. Innocent III. A.D. 1199, in Decret. Lib. V. Tit. XXXIX. c. 28: The bond with which the sinner is bound before God is dissolved in the remission of guilt, that with which he is bound before the Church when the sentence is relaxed. . . . The Lord first raised Lazarus, and then when he was raised bade the apostles unloose him. Liebermann VI. 566.

(164). Iren. IV. 20, 5, quoted in *Baptism*, notes 236 and 241.

(165). Tertullian *Ibid.* c. 9, calls it, "being restored to forfeited (prodactae) salvation."

(166). Iren. III. 23, 1: If man, who had been created by God that he might live, through being injured by the serpent that corrupted him should not any more return to life . . . God would have been conquered.

an instrument of amendment. The pardon itself is God's gift (167); the sentence declaring it is the sentence of the Church, which Christ has promised to ratify in heaven (168);

*Ibid.* 3: Eternal fire was not prepared for man, . . . yet they too shall justly feel it who persevere in wicked works without repentance and without amendment. Tertullian de Poenit. c. 12: Exemologesis will extinguish hell for you. Elfric Hom. in Soames I. 302, and Lingard I. 334: If he confess his sins through contrition, then goeth he forth from the tomb as Lazarus did at the bidding of Christ. Then shall the teacher unbind him from the eternal punishment, as the Apostles unbound the body of Lazarus. Lynd. 237, 334.

(167). Iren. v. 13, and 19, 1: In what way can sins be truly remitted, unless He against whom we have sinned Himself grants remission? Cyprian de Laps. c. 17: The Lord alone can bestow pardon for sins which have been committed against Himself. Ambrose ap. Gratian Caus. XXXIII. Qu. III. Dist. l. c. 51: The word of God forgives the sin, the priest is the judge who pronounces the sentence. *Id. Ibid.*, Caus. XXIII. Qu. v. c. 49: Sins are remitted by the word of God, of which the Levite is the interpreter, and in a sense the executor. They are also remitted by the office of the priest and the sacred ministry. *Id.* De Spirit. Sanct. III. 18: Men give their ministry in the remission of sins, but they exercise not the right of any power, for they do not forgive sins in their own name, but in the name of the Father, Son, and Holy Ghost. They pray; God giveth. The execution is through man, the gift from the power on high. Gregory de Poenit. I. c. 2; Chrysost. Hom. 5, de Verbis Isaiah: Heaven takes its initiating act from earth, for the judge sits upon earth; the Lord follows the servant. Innocent III. A.D. 1199, in Decret. Lib. v. Tit. XXXIX. c. 28: The Church sometimes binds those whom God looses; hence Christ, after raising Lazarus, said to His disciples, Loose him and let him go. Concil. Lat. IV. Can. 65, *Ibid.* Lib. v. Tit. XXXVIII. c. 12.

(168). John XX. 22: As My Father hath sent Me, even so send I you; and v. 22, 27: The Father had committed all judgment to the Son. 2 Cor. v. 19: Θεὸς ἦν ἐν Χριστῷ κόσμον καταλλάσσων ἑαυτῷ . . . καὶ θέμενος ἡμῖν τὸν λόγον τῆς καταλλαγῆς (having placed in our charge for Himself the ministry of reconciliation). Cyprian Ep. 53 (Oxf. 57): He who gave the law that things which were bound on earth should be bound in heaven, allowed also that things might be loosed there which were first loosed here. Pacian Ep. 1 ad Symphor.: Quod per sacerdotes facit, ipsius Christi potestas est. Lynd. 236, 327, calls the shrift the vicar of Christ, because he holds the place (vices) of Christ. Lynd. 237, 334, 337: Although God alone forgives sins, yet the priest exercises his office in imposing penance.

the minister of the sentence which is called absolution (169) does not, however, act simply ministerially, but he acts judicially, being bound first to weigh the sufficiency of repentance and amendment, and afterwards under the Spirit's guidance to interpret the Divine judgment (170). Should he in so doing act arbitrarily or capriciously, or should the repentance, confession and satisfaction upon which his sentence is passed be feigned or unreal, the Lord will amend the sentence of His servant (171), and it will not effect a loosing in heaven.

## The Completion of Reconciliation, Annealing or Extreme Unction.

22. After health comes sickness. To provide for this the Apostles, in accordance, as it is believed, with instructions received from Christ, instituted the anointing of the sick by the presbyters of the Church as a means of grace, whereby, in

And as Innocent [IV.] says: A sinner is never absolved by God who has bound himself by sin, except he be absolved by a priest.

(169). Tertullian de Poenit. c. 12: Is it better to be damned in secret than to be absolved in public?

(170). Chrysost. de Sac. Lib. III., after saying that the Jewish priests only declared a man cleansed from leprosy, continues: But to our priests it is conceded not merely to declare them cleansed, but to cleanse them. Dionys. Eccl. Hier. II. 7: The hierarchs have discriminating powers as interpreters of Divine judgment, . . . deciding by the motion of the Divine Spirit those who have been already judged by the Lord according to their deserts. The Council of Trent, Sess. XIV. c. 6, says: Non est solum nudum ministerium . . . sed actus judicialis quo ab ipso velut a judice sententia pronunciatur. On the other hand, Hooker VI. c. 6, asks: Does absolution really take away sin, or but ascertain us of God's merciful pardon? . . . The latter is our assertion.

(171). Cyprian Ep. 51 (Oxf. 55), 18, A.D. 252: We do not prejudge when the Lord is to be the judge, save that if He shall find the repentance of the sinner full and sound, He will ratify what shall have been determined by us. If, however, any one should delude us with the pretence of repentance, God will judge of those things which we have imperfectly looked into, and the Lord will amend the sentence of His servants.

answer to the prayer of faith, sins might be remitted, the temporal consequences of sin be alleviated, and bodily health be restored, if that were for the soul's health (172). Sickness being generally looked upon as one of the punishments due to sin (173), this anointing was resorted to in all cases of illness, more particularly in cases of serious illness. When exclusively used for mortal sickness, as became the custom after the tenth century, it was called extreme unction or annealing, the sacrament of the departing (174), or the prayer of the oil (εὐχέλαιον), and was held to be the consummation and completion of the penance of life, occupying the same position in regard to the sacrament of penance that confirmation holds to the sacrament of baptism (175).

23. The essentials of annealing or unction are oil without the admixture of any foreign ingredient as the remote matter, and the application of it to the sick person's body as the proximate matter. The form consists in the prayer of the presbyters, which in early times was said by all together in the sick man's chamber after he had been anointed with oil, but after the fourth century appears to have been said over the oil by anticipation, the oil being then carried away and kept by the faithful against emergencies (176). After the ninth century, when the oil was no longer given out to the people, the oil specially consecrated for this purpose was known as the sick man's oil. Where, as in the East, the oil is not hallowed by anticipation,

(172). Mark VI. 13; James v. 14; Innocent, A.D. 416, ad Decentium c. 8, ap. Gratian I. Dist. XCV. c. 3.

(173). 1 Cor. XI. 30: For this cause many are sick among you.

(174). Lynd. 43.

(175). Thorndike v. 562; Devoti Lib. II. Tit. II. § 96; Liebermann VI. 798. In the fourteenth century the Armenian laity neglected confession in the belief that extreme unction wiped out all the sins committed during lifetime. To counteract this practice the Armenians then gave up the use of extreme unction.

(176). Innocent ap. Gratian l. c.: There is no doubt [St. James'] words ought to be received and understood of the faithful who are sick who may be anointed with the sacred oil of anointing, which, after it has been made by the bishop, not only priests but all Christians may use for the purpose of anointing in their own need or in the need of their friends.

the form which constitutes it a sacramental sign is the prayer wherewith it is hallowed; but the form which makes its administration avail to the recipient is the prayer or words wherewith it is administered. According to some, even when solemnly hallowed oil is used, the words of administration constitute the only form (177).

24. As the anointing prescribed by St. James was a corporate act, in which the whole body of the presbyters took part, the assistance of several presbyters, alike in East and West, was formerly held necessary to administer unction regularly (178). In the West seven or more presbyters were formerly required to assist the bishop (179) when he solemnly hallowed the oil on Maundy Thursday, but otherwise the hallowing took place with less solemnity than was employed for the consecration of the chrism (180). The Roman rule and the Western rule which now follows it, require the oil to be consecrated by a bishop (181);

(177). According to Lyndwood 36 the Church of St. Ambrose used the words, Ungo istos oculos, aures ete . . . olio sanctificato in nomine Patris et Filii et Spiritus Sancti. Gregory directed the application to be made in the form of a prayer: Per istam unctionem et suam piissimam misericordiam indulgeat tibi Dominus. Concil. Trident. Sess. XIV. c. 11.

(178). Liebermann, VI. 792. This was the practice in the Western Church, according to Devoti. Sacram. Gregor: Multi sacerdotes infirmos perungunt in quinque sensibus corporis. The writer of the life of Carolus Magnus states that he was anointed with oil by many bishops. In Leofric Missal 240, it is said: After the sick man has been anointed let the following prayers be said, one by each priest. Then follow seven prayers. Benedict. XIV. de Syn. Lib. VIII. c. 4, no. 5.

(179). Leofric Missal, p. 222. Two jars (ampullae) of oil are brought in, offered by the people, and as well the lord bishop (dominus papa) as all the presbyters bless them. *Ibid.* p. 258 speaks of twelve presbyters as witnesses and co-workers of the sacred mystery of the chrism.

(180). Ordo S. Amandi, A.D. 800, ap. Duchêsne, p. 450. The oil of the sick was at first one and the same as the catechumens' oil. Leofric Missal, p. 257, says: Oleum ad unguendos tam infirmos quam energumenos. Lynd. 36 says that in his time it was a different oil.

(181). Concil. Carthag. II. A.D. 390, ap. Gratian Caus. XXVI. Qu. VI. c. 1, and Concil. Carth. III. A.D. 397, *Ibid.* c. 2, forbid this to a presbyter. Apost. Const. VIII. 29: Let the bishop bless the water or the oil. . . . Gelasius, A.D. 494; *Ibid.* 1 Dist. XCV. c. 2; and Concil. Hispal. II. A.D.

but in some parts of the East a single presbyter is allowed to hallow it on behalf of all (182).

25. So long as it continued to be the custom to give out the consecrated oil for private use the administration of unction was undertaken by any Christian who had the hallowed oil at hand (183). Since the ninth century, when this practice was discontinued (184), the sick man's oil is only intrusted to those in holy orders, presbyters or bishops being deemed the proper administrators (185). A single presbyter can administer unction when more cannot be had (186), and in case of emergency it may be administered by any presbyter (187); but the regular administrant is the parochial incumbent, who ought to be assisted by at least one other presbyter, or where another presbyter cannot be had, by a clerk or layman (188).

26. According to early practice the sick man's oil was applied to any part of the body, generally to the breast or to the part affected (189). The old English use was to anoint the eyes, shoulders, nose, lips, breast and reins, hands, crown, and feet, in the order named, each part, after a general prayer in the name of the Trinity, being anointed by a separate presbyter

619, *Ibid.* 1 Dist. LXVIII. c. 4, also reserve the consecration to a bishop. Theodori Poenit. II. III. 8, in H. & S. III. 193: According to the Greeks a priest may make the exorcised oil and the chrism for the sick if necessary. According to the Romans this is only allowed to bishops.

(182). Theodori Poenit. l. c. Apost. Const. VIII. 29: If the bishop be not there let the presbyter bless [the water or the oil], the deacon standing by. Goar Euchol. Graec. § 436; Benedict XIV. allowed presbyters to hallow it in some places. Devoti, § 89.

(183). Innocent I. l. c., quoted above, note 176.

(184). The hallowing of the oil-cruets of private Christians is found in Ordo Amandi, A.D. 800, ap. Duchêsne, p. 450, but it has disappeared in Leofric's Missal.

(185). Innocent ap. Gratian 1, Dist. XCV. c. 3; Const. 3 Reynolds, A.D. 1322: Let the sick man's oil be carried with great reverence to the sick, and let the priests anoint them with great devotion, and with the use of prayers provided for that purpose. Devoti, § 92.

(186). Alexander III. in Decret. Lib. v. Tit. XL. c. 14.

(187). Devoti, § 93.

(188). Lynd. 36.

(189). Mabillon and Menard, quoted by Devoti, § 90.

with a separate prayer (190). The Roman use is to anoint the five organs of sense. In women the reins are not anointed, nor yet in men when illness prevents their being conveniently moved (191). The Greeks anoint the brow, the chin, both knees, then the breast, both hands, and lastly the feet (192). The priest who administers annealing should be vested in surplice and stole (193), and the pads of lint used for wiping off the oil should be carefully burnt.

27. The proper subjects of annealing are all baptized Christians (1) who are sick or in danger of death (194); (2) who are at the time in a state of grace (195); and (3) who being adults, *i.e.*, having reached their fourteenth year, desire to receive it (196).

(190). Leofric Missal, p. 240, gives (1) the prayer in the name of the Trinity, (2) the prayers used in anointing each part, and (3) the prayers then said by each of the anointing priests. The prayers used in anointing are much longer than those in the Roman rite.

(191). Decret. ad Armenos Eugenii IV. A.D. 1439, ap. Devoti, § 90.

(192). Arcudius Lib. v. c. 7.

(193). Lynd. 36 ; Craisson, § 3937.

(194). Egbert's Excerpt, A.D. 740 : If any one be sick let him be anointed by the priests with hallowed oil. Edgar's Law 65, A.D. 965 ; Const. 9 Peckham, A.D. 1281 : Extreme unction ought to be given to them only who seem to be in danger of death. Const. 3 Reynolds, A.D. 1322, says that it should not be administered to those who are well, because, says Lynd. 36, for them there is another remedy—penance. Illness includes old age, a wound, childbirth, but not the prospect of being executed for crime. Craisson, § 3942 ; Liguori VI. 717, says that in a doubtful case it ought to be administered.

(195). Innocent, A.D. 416, l. c. The hallowed oil may not be used to penitents because it is a kind of sacrament, and how can those to whom all sacraments are forbidden be allowed the use of one kind ? Innocent III. A.D. 1204, in Decret. Lib. I. Tit. xv. § 1 : There are two kinds of unction —one outward, which is material and visible, the other inward, which is spiritual and invisible. Of the first St. James says, Is any sick, etc. Of the second the apostle St. John says : But the anointing which ye have received abideth in you, etc. The outward visible unction is the sign of the invisible unction, but the inward unction is not only a sign but a sacramental reality, because, if it is worthily received, without doubt it effects and increases what it professes.

(196). Const. 3 Reynolds, A.D. 1322.

It may also be administered to persons mentally affected at lucid intervals, provided they were previously of repentant mind (197). The early English use prescribed the repetition of annealing every day for seven days, provided the sick man survived so long (198), but the Roman use, introduced by Archbishop Reynolds in the 14th century, only permitted it to be given once a year (199), except in a case of fresh illness (200). Being a species of penance, it was in some churches not given to persons of saintly life who did not need penance (201). For the same reason the ancient rule required it to precede the administration of the viaticum or last communion (202), but the Roman practice since the 13th century has inverted this order (203). In the East the oil, which is solemnly consecrated on Maundy Thursday, is not reserved to be used for unction at a future time, but is at once employed to complete sacramentally the forgiveness of those who have confessed their sins and received absolution (204).

28. The effect of annealing is to convey to the recipient the strengthening power of the Holy Ghost, which, by the prayers of the presbyters and people, has been first communicated to the hallowed oil. When administered to one who is a fit

(197). Arcudius Concord. Lib. v. c. 4 states it to be the custom of the Greeks to give annealing to those distressed in mind. Const. 9 Peckham, A.D. 1281: We advise that [extreme unction] be given to them that are in a phrensy or aberration of mind if they had before a care of their salvation with assurance. For we believe that the receiving thereof contributes to their getting a lucid interval, or at least to their spiritual good and increase of grace, upon condition that they be sons of predestination.

(198). Leofric's Missal, p. 241.

(199). Const. 3 Reynolds, A.D. 1322: Let them teach the people that the sacrament of extreme unction may be received again after one year, *i.e.*, once in one year in grievous sickness, when there is a fear of death.

(200). Devoti, § 96, following Thomas Aquinas, Suppl. III. Qu. 33, art. 1.

(201). Liebermann VI. 784.

(202). Sacram. Greg., followed by Leofric Missal 241; Can. 32 Elfric, A.D. 957.

(203). Bridgett, Hist. of Eucharist I. 233.

(204). Devoti, § 95. Benedict. XIV. De Syn. Lib. VIII. c. 5, no. 5, calls this a mere ceremony.

subject to receive it (1) it strengthens him to meet the last attack of the ghostly foe, and restores him to bodily health if that be for the good of his soul; (2) it alleviates the temporal sufferings caused by sin by imparting a firm trust in the Divine mercy; (3) it gives forgiveness, and exterminates the last remains of sin (205). Whether this forgiveness extends to mortal as well as to venial sins is a moot point (206). Annealing ought, therefore, always to be preceded by confession and penance (207).

(205). James v. 14 enumerates them: (1) the prayer of faith shall rescue the distressed one (*τὸν κάμνοντα*), which may apply equally to distress of mind or body; (2) the Lord shall raise him up, which also applies to soul as well as body; (3) if he have committed sins it shall be forgiven him (*ἀφεθήσεται αὐτῷ*). The bishop prays in Apost. Const. VIII. 29: Grant to them [*i.e.*, the water and the oil] power to restore health, to drive away diseases, to banish demons, and to disperse all snares. Edmund's Speculum Ecclesiae c. 14, A.D. 1236: Unction delivers the infirm who are in danger of death from corporal and spiritual penalties.

(206). Lynd. 36 states that it only gives forgiveness of venial sins. Liebermann VI. 793 says mortal as well as venial. Craisson, § 3916.

(207). Elfric. Can. 32, A.D. 957: The sick man before his anointing shall with inward heart confess his sins to the priest, if he hath any for which he hath not made satisfaction according to what the apostle taught. And he must not be anointed unless he request it and make his confession. Edgar's Law 65, A.D. 960.

## V.

## ORDER AND ORDINATION.

### Order Generally.

1. Order is, properly speaking, the arrangement of things equal and unequal by assigning to each its proper place (1). When applied to persons in the Church it is used to express the placing of individuals in any rank or estate (2) which in relation to others has distinct duties. In this sense there are sometimes said to be five orders, those of catechumens, the faithful, officers of service (ministri), elders (presbyteri), and overseers (episcopi) (3); at other times three, viz., the faithful, officials, and penitents (4); or otherwise, the faithful living in the world, the faithful under vows, and the faithful holding office (5). Ordinarily two estates only are distinguished (6),

(1). Augustin de Civ. Dei XIX. 13, 1: Ordo est parium disparium-que rerum sua cuique loca tribuens dispositio.

(2). The term Ordo is first met with in Tertullian Exhort. ad Cast. c. 7, A.D. 196, quoted in *Baptism*, note 215, where it is used to denote the presiding ranks, *οἱ προιστάμενοι* of 1 Thess. v. 12; *οἱ ἡγούμενοι* of Heb. XIII. 7, 17, 24; *οἱ προηγούμενοι* of 1 Clem. Rom. 2, 1; Hermas, Vis. III. 9. It is called *τάξις* by Clem. Rom. 41; Concil. Ancyr. A.D. 314, Can. 4; Concil. Neocaesar. A.D. 314, Can. 1; Concil. Laodic. A.D. 363, Can. 3; Socrates VI. 18; VII. 7; in Hellenistic Greek, *κλῆρος*.

(3). Hieronym. in Esai. v. 19, 18, speaks of *fideles* and *catechumeni* as forming two out of the five estates of the Church (ordines ecclesiae). 1 St. Peter v. 3 directs the clergy not to domineer over the estates (*οἱ κλῆροι*). Concil. Neocaesar. A.D. 314, c. 5 calls the catechumens a *τάξις*.

(4). Liebermann VI. 736.

(5). Greg. Mor. Lib. XXXII. c. 20 says the Church consists of three orders, conjugatorum, continentium atque rectorum. *Id.* in Ezek. II. Hom. II. c. 5, says that the Church consists of bonorum conjugum, continentium, praedicantium. Raban Maur. de Inst. Cler. Lib. I. c. 2: Tres sunt ordines in ecclesia, laicorum, clericorum et monachorum.

(6). Iren. IV. 26, 4 speaks of the ordo presbyterii. Concil. Nic. A.D. 325, Can. 5, of the *λαικὸν τάγμα*. Hieronym. ap Gratian Caus. XII. Qu. I. c. 7:

one to which admission is given by the sacrament of baptism, the order of laymen, the other to which admission is given by some form of benediction, the order of church officers (7), whose lot or inheritance is in the Lord's portion (8). The latter are said to constitute the clergy (9).

2. Whether used of clergy or laity the term order still admits of three senses which require to be distinguished. (1) It denotes the persons who form the rank or estate; (2) the position which they occupy in the Church; and (3) the spiritual gift, whether character or authority, which is imparted to them by the benediction for the duties of their position (10). This spiritual gift is sometimes a true spiritual character, sacramentally bestowed by the use of a sacred sign or symbol (11), as when the presbyterate is called an order; at

There are two classes of Christians, one devoted to Divine service, to contemplation and prayer, as are the clergy . . . the other that of laymen.

(7). Siricius, A.D. 385, ap. Gratian I. Dist. LXXVII. c. 3: Whoever therefore has devoted himself to the Church. Socrates I. 14 speaks of Arius finding means to enter the Church. Hieronym. ap Gratian Caus. XII. Qu. I. c. 5.

(8). Hieronym. l. c. Clementines *Ibid.* c. 2; Augustin *Ibid.* I Dist. VIII. c. I.

(9). Cod. Theodos. Lib. XVI. Tit. 2, 2: Qui divino cultui ministeria religionis impendunt clerici appellantur. Isidore de Eccles. Offic. II. 1, 1: Omnes qui in ecclesiastici ministerii gradibus ordinati sunt generaliter clerici appellantur.

(10). Thus in the phrase *πεπάνσθω τοῦ κλήρου* or *ἄκυρος ἔστω ἡ χειροτονία, κλῆρος* is used in the second sense to express position in the Church, and by the Greeks order is more often used in this sense. When, however, order is called a character, and is said to be indelible, and is forbidden to be reconferred, it is used in the third sense, to express the spiritual gift.

(11). Hugo de St. Victor in Lynd. 117, 309, defines it as a sacred sign or symbol whereby spiritual power is bestowed on the ordained for his office. The Schoolmen define it as the gift of a spiritual power, and the conferring of grace for the discharge of ecclesiastical ministrations. Moroni calls it a sacred rite, whereby a Christian receives power to exercise sacred functions, and the grace to exercise them faithfully. Devoti, Lib. II. Tit. II. § 97, defines order as "a sacrament in which by a solemn inauguration a power is bestowed for discharging sacred functions." Hooker II. 588 calls it "a gracious donation which the Spirit of God doth bestow." Cranmer in Lord's Formularies of Faith, 1856, p. 277:

other times a dignity or accession of authority, as when the episcopate is called an order (12); at other times a simple setting apart for authorised service, as when the doorwardenship is called an order (13). The term order is not, however, used of any class of persons temporarily holding office in the Church, to whose ranks admission is given without the use of a sacred sign, or of any class which is not specially set apart for some Eucharistic purpose (14).

3. In a sacramental sense order may be defined to be a spiritual gift or Divine qualification bestowed from above, in answer to the prayers of the Church, by the use of some sacred sign, the recipients of which are fitted in a greater or less degree to represent Christ before the world (15) and their fellow-men in intercession before God (16). This gift, promised to the Apostles by Jesus Christ when He was upon earth, and bestowed on them on the day of Pentecost, when the Spirit fell upon them, is held to be by transmission inherent in the whole body of baptized Christians collectively, but

Order is a gift or grace of ministration in Christ's Church, given of God to Christian men by the consecration and imposition of the bishop's hands upon them.

(12). Decret. Lib. I. Tit. XIII. c. 1.

(13). Lynd. 117 gives the above threefold division. Ayliffe 400. They are called respectively dignitates, ordines, et ministeria. Decret. Lib. I. Tit. VI. c. 7; Ambros. ap Gratian Caus. I. Qu. I. c. 83; and Augustin *Ibid.* c. 84, distinguish offices from spiritual gifts.

(14). Can. 18 Elfric, A.D. 957: There is no order appointed by ecclesiastical institution but these seven [which have to do with the Eucharist]. Monkship and abbotship are of another sort. On this ground kingship is also held not to be an order, although admission is given to it by the use of a sacred sign and anointing. Pupilla Oculi in note 37.

(15). In Luke X. 16 Christ says to the Seventy: He that heareth you heareth Me; in Math. XXVIII. 19: Lo, I am with you always. Conf. Gal. VI. 17. Hilary, A.D. 375, Quaest. in Nov. Test. 44 calls a presbyter (1) sacerdos Dei, and (2) praepositus plebis. See *Baptism*, note 223.

(16). Tertullian Apol. 30 dwells on the intercessory powers of Christians generally. Origen, in Lev. v. 3, states that Christ gave His priestly office to the Church, and that deacons and priests consequently take upon themselves the sins of the people, and imitating the Master grant remission of sins.

diffusedly, each sharing in it more or less according to his merits (17). In this sense the Church is said to be the home of the Spirit, and all the faithful who have not lost the grace of the Spirit constitute a holy order, a royal priesthood, and have collectively the power of binding and loosing (18).

(17). Acts II. 17, 18; Math. XVIII. 15–18; 1 Cor. XII. 10, 28; Rom. XII. 6, 7 speaks of the χαρίσματα of prophecy, &c. Eph. IV. 11; 1 Clem. c. 38: Let each man submit to his neighbour, as he was appointed, in the special grace given him (ἐν τῷ χαρίσματι αὐτῶν). Iren. I. 23, 1: The Apostles filled with the Holy Ghost through the laying on of hands those who believed in God. Hippolyt. Haer. Prooem.: None will refute heresies save the Holy Spirit bequeathed unto the Church, which the Apostles having in the first instance received have transmitted to those who have rightly believed. Iren. II. 32, 1: Those who are in truth His disciples, receiving grace from Him, do in His name perform miracles so as to promote the welfare of other men, according to the gift which each one has received from Him. For some do certainly drive out devils. . . . Others have foreknowledge of things to come. . . . Others still heal the sick. . . . Yea, moreover, the dead even have been raised up. . . . It is not possible to name the number of the gifts which the Church throughout the world has received from God in the name of Jesus Christ. *Ibid.* III. 4, 1: The Apostles, like a rich man, deposited in the hands of the Church all things pertaining to the truth. Origen contr. Celsum I. 46: There are still preserved among Christians traces of that Holy Spirit which appeared in the form of a dove. They expel evil spirits, and foretell many cures, and foresee events according to the will of the λόγος. De Prin. IV. 1, 29: Christ is in each individual in as great a manner as the amount of his deserts allows. Cyprian Ep. 75, ad Magnum (Oxf. 69) 11, A.D. 255. Cyril. Catech. XVI. A.D. 350: The Holy Ghost, one and uniform and undivided in Himself, distributes His grace to every man as He wills. He employs the tongue of one man for wisdom; the soul of another He enlightens by prophecy; to another He gives power to cast out devils; to another to interpret the Divine Scriptures. He strengthens one man's self-command; He teaches to another almsgiving, another to fast and train himself; another He trains for martyrdom; diverse to different men, yet not diverse from Himself. Clem. Strom. VI. 13: One who lives perfectly according to the Gospel is in reality a presbyter of the Church and a true deacon of the will of God. . . . And although here on earth he be not honoured with a first rank seat (πρωτοκαθεδρία), he will sit down on the twenty-four thrones as John saith. Gregory ap Gratian I. Dist. LXXXIX. c. 1.; Innocent III. in Decret. Lib. V. Tit. VII. c. 12.

(18). In 1 Cor. V. 3–5 St. Paul condemns in Christ's name συναχθέντων

4. By a particular benediction, or unanimous prayer on the part of the whole Church, the effect of which is communicated by the imposition of hands (19), the special power of the Spirit bestowed on St. Peter and the other Apostles by Christ, which qualified them to act as stewards of the Church (20), is com-

ὑμῶν (the Ch u) καὶ τοῦ ἐμοῦ πνεύματος, σὺν τῇ δυνάμει τοῦ Κυρίου ἡμῶν. In 2 Cor. II. 5–11 the punishment is spoken of as inflicted by the community (οἱ πλείονες), and the forgiveness is assigned to them: ᾧ δέ τι χαρίζεσθε, κἀγώ.

(19). Pseudo-Ambros. in 1 Tim. III. 13, A.D. 400: Layings on of hands are mystical words, whereby the elect is confirmed for his work and receives authority, so that he can with a pure conscience offer sacrifice to God in the Lord's place. 1 Tim. IV. 14 calls it προφητεία. Lucifer de Athanas. I. 9, A.D. 360: No man can be filled with the power of the Holy Ghost to govern God's people save he whom God has chosen and on whom hands have been laid by the Catholic bishops.

(20). In John XX. 22 the words are: Receive a holy gift of the Spirit (Λάβετε Πνεῦμα ἅγιον); in 2 Tim. I. 6 it is called χάρισμα. That the Apostles in ordaining must have conveyed or rather have by their prayers procured to be transmitted some higher gift of the Spirit for those on whom the Spirit had been already outpoured is clear, because (Acts I. 22; XIII. 2; XX. 28) those ordained by them are said to have been ordained by the Holy Ghost. Iren. IV. 26, 4 and 5; I. 13, 4: The gift of prophecy is not bestowed on men by Marcus the magician, but only on those on whom God sends His grace from above. Tertullian Apol. c. 39: Among us the work of judging is done with great gravity as before qualified (certos) persons [deputed] from the face of God. Teaching of the Apostles, p. 36: At the time of early dawn Christ lifted up His hands and laid them upon the heads of the eleven disciples, and gave to them the gift of the priesthood. And suddenly a bright cloud received Him up. Iren. Haer. III. 1, 1: The Apostles were invested with power from on high when the Spirit came down on them. Methodius, Banquet of the Virgins, Diss. II. c. 3; Hilary Quaest. in Nov. Test. 93, ap. Migne XXXV. p. 2281, A.D. 375: The Lord is said to have breathed on His disciples after His resurrection. . . . This inbreathing of Christ is a certain grace which, by transmission (per traditionem), is infused into those who are ordained, by which they are made more acceptable. For as the Holy Ghost was bestowed on the Saviour in visible form that there might be no doubt that He is invisibly bestowed on them that believe after baptism, so He was inbreathed at the beginning that He might be believed to be imparted by ecclesiastical transmission. *Id. Ibid.:* The forms of three offices of the Holy Ghost were given to the apostles. The first, which is general, was given at

municated to individuals in varying degree for general or local use (21), whereby they are deputed to represent Christ more perfectly before the world, and their fellow-Christians more acceptably before God. This special power constitutes what is technically called order, the sacrament of the perfect (22), the gift of second or superior worth (23). And as there was but one inbreathing of Christ (24) after His resurrection by which the Apostles received ecclesiastical power, although there were many commissions given to them, so there is but one

Pentecost, when the Spirit fell on all. . . . The second is particular, not belonging to all the faithful, but only to bishops, so that by the laying on of hands they gave the Holy Spirit to the baptized. . . . The third was given only to the Apostles, the power of working signs and wonders. Theophylact Com. in Joan.: They who, together with Peter, were endowed with the grace of oversight, have authority to remit and bind. Basil Ep. 188: For those who first went forth from the Fathers had ordination, and by the laying on of their hands they had the spiritual gift. Rabanus de Cler. Inst. I. 30, A.D. 834: The same Spirit was given to the Apostles twice by Christ—once upon earth after His resurrection, and once from heaven after His ascension. Concil. Aquisgran. A.D. 806, ap. Amalarius c. 9: The sacerdotal order in the New Testament took its rise from Peter. To him authority was first given, but the other apostles were admitted to share his honour.

(21). Origen de Prin. I. 3, 7: There is another grace of the Holy Spirit which is bestowed upon the deserving through the ministry of Christ, in proportion to the merits of those who are rendered capable of receiving it. *Id.* contra Celsum VII. 51: The words "Receive the Holy Ghost," refer to a higher degree of spiritual influence than the passage, "Ye shall be baptized with the Holy Ghost." Apost. Const. VIII. 16.

(22). Athanas. Ep. ad Dracont. 3 and 4 calls the gift of order as real a gift as the grace of baptism. Gregor. Nazianzen, Orat. XLIII. 78 says of Basil: He gives the hand of the Spirit. Augustin ap. Gratian Caus. I. Qu. I. c. 97 calls order as much a sacrament as baptism. *Id. Ibid.* III. Dist. IV. c. 32: He who is baptized has the sacrament of baptism, and he who is ordained has the sacrament of giving baptism.

(23). In the Missale Francorum, the consecrator prays that the presbyter may receive and hold from God secundi meriti munus. Leofric Missal, p. 215: Give to this thy servant the dignity of the presbyterate, renew within him the spirit of holiness, and let him receive from Thee the gift of superior worth.

(24). John XX. 22.

sacrament of order (25). Nevertheless, since the perfect concentration of this higher gift upon individuals is not usually accomplished all at once, but by steps or degrees (26), each of these degrees is called, in a specific sense, an order, not as being a distinct sacrament in itself, but as forming part of and having a distinct share in the one sacrament of order (27).

5. The Roman Church in mediaeval times, and the English Church following it, recognised and allowed seven steps or degrees in order (28), and the Spanish and early Gallican

(25). It is recorded that Christ first authorised His disciples (the seventy) to baptize (John IV. 2) and cast out devils (Math. X. 28), then to interpret His law by deciding what was and what was not sin (Math. XVIII. 18). Next He commissioned the Apostles (the Twelve) to "do this in remembrance of Me" (Math. XXVI. 26). Anon by inbreathing He gave both Apostles and disciples the power of bestowing the Holy Ghost, and of retaining and remitting sins (John XX. 22), and authorised the Apostles to make disciples of all nations (Math. XXVIII. 19). And lastly He commissioned St. Peter (John XXI. 15), to whom He had already promised the keys of the kingdom of heaven (Math. XVI. 18, 19), to feed and pasture His sheep. Excepting the inbreathing, which was a gift of power, the rest were commissions of authority, given to them partly as constituting the Church, partly as rulers or stewards of the same, and partly to St. Peter as chief steward (Luke XII. 41-43; Math. XVI. 18, 19; John XXI. 15). So Clement ad Rom. I. 42. A.D. 95: Having therefore received their commissions, and being fully assured by the resurrection of our Lord Jesus Christ, and confirmed in the word of God with full assurance of the Holy Ghost, they went forth proclaiming that the kingdom of heaven was at hand.

(26). Euseb. X. 4: In this temple [the Church] there are also thrones, many seats and benches in all the souls in which the gifts of the Holy Ghost reside. But in the chief of all [the bishop] Christ Himself, it may be, resides in His fulness. In those that rank next to Him each one shares proportionately in the distribution of the power of Christ and of the Holy Spirit. There may also be seats for angels in the souls of some, who are committed to the instruction and care of each.

(27). Const. 3 Peckham, A.D. 1281; Durandus and Caietan ap. Craisson, § 1693; Devoti Lib. II. Tit. II. § 97. Thomas Aquin. in IV. Dist. 24, Qu. 2, art. I.: The division of order is not that of an integral whole into its component parts, nor yet that of a generic whole into its species, but that of a whole in respect of power, this power in its completeness residing in one, and others having only a certain participation in it. These steps are called βαθμοὶ in Greek, gradus in Latin.

(28). Laws of Satisfaction, A.D. 725: There are seven steps of ecclesiastical

Churches nine, some of which were regarded as actually participating in the sacramental gift of order, others as probationary steps before advancement to the participating steps. Of these the three highest according to the Roman view, the presbyterate, diaconate, and subdiaconate, are called holy orders, because they have directly to do with the service of the altar; and hierarchical orders, because they admit to a share in the Divine government of the Church; the four lower ones, those of collets, exorcists, readers and doorwardens (29) are called unsacred and non-hierarchical, because they have not directly to do with the service of the altar, neither do they admit to a share in the government of the Church. The Eastern Church only allows of four steps or degrees in order, exclusive of the episcopate, of which two, the presbyterate and diaconate, are held to be holy orders, whereas the other two, the subdiaconate and the readership, are accounted unsacred (30).

6. Each step or degree in order is by some considered to possess a sacramental character, because in it an increase of grace is bestowed by an outward sign (31). By others the sacrament of order is confined to the presbyterate, diaconate, and subdiaconate (32), because only these three have special duties in solemn worship, and admit to a share in the apostolic government of the Church. More commonly the sacrament of order is limited to the presbyterate and diaconate, because these are given by a solemn imposition of hands within the sanctuary, and some there are who confine it to the presbyterate only (33).

degrees or holy orders. Elfric, Can. 10, A.D. 957 : There are seven orders appointed in the Church. Ivo of Chartres, Serm. II. ; Hugo de St. Victor, Lib. II. Pars 3, c. 5 ; Const. 5 Peckham, A.D. 1281, quoted note 74. See *The Sacraments*, § 6.

(29). The Irish canons only recognise six orders, and have no order of collets. Duchêsne, 353. Innocent III. de Sacr. Altaris Ministerio I. 1, in Migne CCXVII. p. 775, enumerates six only as having to do with the Eucharist, because there were six steps leading up to the temple.

(30). Joan. Damasc. Dial. con. Manich. c. 3 ; Devoti, Lib. II. Tit. II. § 97.

(31). Elfric, Can. 12, A.D. 957. Const. 5 Peckham, A.D. 1281, Thomas Aquinas, Bellarmine, hold that each of the seven degrees is sacramental.

(32). Gousset Théologie Dogmatique II. § 425 ; Craisson, § 1643.

(33). Lacy's Pontifical, p. 84, states that some do not say the Litany before ordaining to the diaconate, probably on this ground.

Ordination to the presbyterate must necessarily be a true sacrament, because in it there is an outward sign, an inward grace, and a direct appointment by Christ. Ordination to the diaconate would appear to be likewise a sacrament, because it was instituted by the Apostles according to the appointment of Christ (34). The bestowal of any degree below the diaconate is not, however, necessarily a sacrament, though it may become sacramental if administered with corporate prayer and the use of a hallowed sign.

7. In addition to the seven steps or degrees which Western theologians enumerate as constituting order there are two other estates of men which canonists call orders, because they are ranks of men having a distinct position in the Church and distinct duties, but theologians decline to regard as orders, because they have no special function in the service of the Eucharist (35). These are (1) the estate of tonsured or ecclesiastical persons, who belong to the order of laymen, and (2) the estate of ruling presbyters or bishops (36), who belong to the order of

(34). Clem. Ep. 1 ad Cor. c. 42: Many ages before [the Apostles were appointed by Christ, and deacons by them] it was written concerning bishops and deacons, I will appoint their bishops in righteousness and their deacons in faith [Isa. LX. 17]. Ignat. ad Smyrn. c. 6: Respect the deacons as exercising their ministry according to the appointment of God. Liguori, Lib. VI. 742: Since it is very probable that the delivery of the instruments is necessary, in practice it should be adhered to at least in the order of the presbyterate and diaconate, for as regards other orders it is probable that they are not sacraments.

(35). Augustin Ep. Gratian I. Dist. LXXXIX. c. 5, and I. Dist. XCVI. c. 1, and I. Dist. XXIII. c. 20; and Decret. Lib. I. Tit. XIV. c. 11, are generally relied on to show that the tonsure is deemed an order. Against that view Sext. Lib. I. Tit. IX. c. 4 is quoted.

(36). Tertullian de Bapt. c. 17 distinguishes priests from high priests (summi sacerdotes). Pseudo-Isidor. ap. Gratian III. Dist. V. c. 4, says that *summi sacerdotes* hold the place of apostles. *Id. Ibid.* Caus. II. Qu. VII. c. 38 calls them successors of the Apostles; so also Elfric in Thorpe, p. 403; Hermas, Vis. III. 9, 7 mentions side by side the *προηγούμενοι τῆς ἐκκλησίας* (rulers and bishops) and *πρωτοκαθεδρῖται* (or presbyters holding the first seat). Origen in Math. XVI. 22: Those who are intrusted with the presidency *πρωτοκαθεδρία*) of the laity are the bishops and presbyters. Eusеb. X. 4 calls presbyters priests *ἐκ τοῦ δευτέρου θρόνου*. Also Hieronym. in Epitaph. in

priests (37). Of these nine estates the presbyterate and episcopate are alone spoken of as being full orders, and are said to constitute the priesthood (*sacerdotium*), because they exercise all the three functions of the priesthood, viz., that of making offerings, that of preparing and presenting their own and others' offerings, and that of hallowing the offering. Deacons are said to belong to the priesthood (38), because they exercise the two former of these functions. All the other estates, being either assistants to deacons (ministri) or having lower ministerial functions to

Paulam; Gregor. Nazianzen de Eccles. Anastas. 148; Devoti, Lib. I. Tit. III. § 87; Cavagnis II. 101; Lightfoot's Apost. Fathers II. 120.

(37). In the earliest times bishop and presbyter are used interchangeably to describe the same local officers of the Church. In Acts XX. 28 St. Paul calls the πρεσβυτέρους of Miletus ἐπισκόπους. Clem. Ep. I. ad Cor. 42: The Apostles preaching in all lands appointed the firstfruits of their teaching ἐπισκόπους and deacons. *Ibid.* 44; Apost. Can. 38 directs a synod of ἐπίσκοποι to be held, which includes presbyters. Cyprian Ep. 27, 1, Euseb. VI. 19, says that at Caesarea Origen was invited to preach by the bishops [*i.e.*, the presbyters]; VI. 23, that he received ordination from the bishops, *i.e.*, the bishop and presbyters. Cornelius, *Ibid.* VI. 43, says that Novatus was raised to the presbyterate by the favour of the bishop placing his hands upon him and ordaining him to the order of bishops. Euseb. III. 23 calls the bishop the presbyter. Thom. Aquin. in 4 sect. Dist. 24, Qu. 2, art. 2: Episcopatus non est ordo. *Pupilla Oculi*, circa 1378 A.D.: The episcopate is not properly an order but a dignity or excellence in order, because it does not impress a character, and also because every order is ordained for the sacrament of the Eucharist. Hence Lynd. 117, 309: Discordant opinions may be harmonised thus. It may be said the episcopate is not an order in the sense that in it a new character is bestowed, and thus the opinion of the theologians holds good. In so far, however, as episcopal power in regard to the [previously] forbidden sacraments depends on the power of order, it may be called an order, because order is a sacred sign whereby a spiritual power and authority is bestowed to do the things which belong to that order, and the opinion of the canonists holds good. By others presbyters are said to have the priesthood *in measure*, bishops to have it *in fulness*, so that the episcopate is an extension of the presbyterate.

(38). Optatus adv. Donat. I. 35: Why mention deacons placed in the third rank, why presbyters placed in the second priestly rank (in secundo sacerdotio institutos)? The Anglo-Saxon preost is applied to both bishops, priests, and deacons. Lingard's Anglo-Saxon Church I. 147.

discharge, constitute the *ministerium*, and in the fourth century were spoken of as being on the clergy roll (39).

### Holy and Hierarchical Orders.

8. There is this distinction between holy and hierarchical orders that holy orders are classes of men considered as having a distinct share in the priestly character and separate duties to perform in the solemn Eucharistic worship (40), whereas hierarchical orders are classes of men considered as exercising authority over others and governing the Church. Besides the order of laymen, who, in so far as they are qualified to make offerings (41), are a holy order, there are properly only two holy orders, those of deacons and presbyters (42). It is the deacon's duty to prepare and present the pure offering, the presbyter's duty to hallow it by presenting his own and the people's intercessions. Since the layman's function in the priesthood, that of making offerings, came generally to be discharged by subdeacons in consequence of the decline in the standard of Christian life, it has been usual to count the subdiaconate the third holy order (43).

(39). Concil. Chalcedon, A.D. 451, Can. 2, speaks of bishops, presbyters, or deacons, or any others of those that are reckoned on the roll (ἐν τῷ κανόνι).

(40). Clem. 1 Cor. c. 40 : Their own proper place is prescribed to the priests, and their own special ministrations to the Levites. Although as Lightfoot II. 123 observes there is no direct reference here to the Christian ministry, the indirect reference is plain. Pseudo-Isidor. *Ibid.* III. Dist. 1. c. 41 and 42 ; Ayliffe 119, 121.

(41). See *Baptism*, § 27. *The Eucharist*, § 4.

(42). Clem. I. 42 : They appointed the firstfruits of their labours to be bishops and deacons. Cyprian de Laps. c. 6 : Among the presbyters there was no devotion, among the deacons (ministri) no sound faith. Concil. Benev. A.D. 1091 ap. Gratian I. Dist. LX. c. 4, and Dist. XXXII. c. 11 : The orders which by authority of Christ and his Apostles are holy are the diaconate and the presbyterate. . . . We call the diaconate and the presbyterate holy orders, because the primitive Church is said to have had these only. Teaching of Addaeus, p. 28, says that the Apostle Addaeus "appointed deacons and elders in the villages."

(43). Concil. Antioch, A.D. 341, Can. 3, appears to include subdeacons in the priestly ranks, and by implication Epiphan. Expos. Fidei c. 21,

Bishops are included with presbyters in one holy order, because they perform the same intercessory duties as presbyters in solemn worship (44). Collets are included with deacons in one holy ministry, in so far as they are allowed to take the place of deacons in ministerial duties at the altar (45).

9. The presbyterate is an estate of Christians, perfect so far as human knowledge can ascertain (46), appointed to perform

Concil. Laodic. A.D. 363, Can. 25, forbids the subdeacon to give the hallowed bread and to hallow the cup, and Can. 23 forbids him to wear a stole. Concil. Gerund. A.D. 583, Can. 1 ; Concil. Tolet. II. A.D. 531, Can. 3, imply that the subdeacon then aspired to the position of a holy order. Pseudo-Clement ap. Gratian III. Dist. II. c. 23 : The sacramental signs of the Divine mysteries are intrusted to three orders, the presbyter, the deacon, the minister [*i.e.*, the subdeacon]. Concil. Benev. A.D. 1091, l. c. : Subdeacons we allow also to be a holy order, since they minister at the altar, provided they are men of approved religion. Innocent III. in Decret. Lib. I. Tit. XIV. c. 9 : Now the subdiaconate is included among holy orders.

(44). Isidore de Eccl. Off. II. 7 : The dispensation of the mysteries of God is committed to presbyters equally with bishops. They preside over churches of Christ, and are associated with bishops in the consecration (confectio) of His divine Body and Blood, in instructing the people, and in the office of preaching. Albinus Flaccus ap. Hittorp. p. 50, says that to presbyters equally with bishops have been committed the keys of the kingdom of heaven. Hugo de St. Victor ap. Maskell Mon. Rit. II. 246.

(45). Joannes Ep. ad Senarium ap. Migne LIX. p. 405 : Acolyti sacramentorum portanda vasa suscipiunt et ministrandi sacerdotibus ordinem gerunt.

(46). Iren. III. 3, 2 : [The Apostles] desired them to be eminently perfect and altogether without reproach whom they left behind to succeed them, handing on to them their own position of presidency. Tertullian Apol. c. 39 : The tried men of our elders preside over us, obtaining that honour not by purchase but by established character. Clem. Strom. VI. 13 : One who lives perfectly is not regarded as righteous because a presbyter, but enrolled in the presbyterate because he is righteous. In the ordination prayer, Deus Sanctificationum, the bishop prays "that they may by inviolable charity grow to be perfect men, and continue to the day of Christ full of the Spirit." Gildas c. 66, in H. & S. I. 75 : None but holy and perfect men and followers of the Apostle can lawfully, and without the offence of sacrilege, undertake the highest ecclesiastical degree.

the highest part upon earth in the priestly work (47) of presenting man to God whilst revealing God to man (48). For this purpose it is endowed with a spiritual gift obtained from God by the united prayers of the Church, and communicated sacramentally by the laying on of hands, and it is therefore properly called a holy order of priesthood. The diaconate is an estate instituted by the Apostles to relieve presbyters of the care of the temporal concerns of the Church, and is therefore an estate of ministry or service. Yet since the care of temporal concerns involves the preparation of the solemn offering and the conduct of the outward ceremonies of earthly worship, the deacon's service is connected with the altar, and the diaconate is in consequence also called a holy order, but a holy order of ministry. These two holy orders, those of priesthood and ministry, together constitute the clergy (49), and so close is the connection between the two that neither a solemn offering can be made by a presbyter without a deacon to prepare and present it, nor by a deacon without a presbyter to hallow it (50). Private consecra-

(47). Justin, Trypho, c. 116 : God receives offerings from no one except through His priests. Tertullian, in reply to Marcion IV. 100 : For to Himself He by His Blood associated men, and willed them to be His Body's priests, Himself the Supreme Father's perfect Priest by right. *Id.* adv. Marcion IV. 9 : Christ is the Father's universal priest ; IV. 35 : Christ is the veritable High Priest of God the Father. 1 Clem. c. 36 ; Origen de Prin. II. 7, 4 ; Hieronym. ap. Gratian III. Dist. II. c. 89 ; Leo, A.D. 451, *Ibid.* Caus. I. Qu. I. c. 68 : In the Church of God neither the priesthoods are valid nor the oblations true unless the true High Priest reconciles us in the proper character of His nature. Apost. Const. VIII. 46 : The great High Priest, Christ, the only begotten, being made man for our sake, and offering the spiritual sacrifice to His God and Father before His suffering, gave it us alone in charge to do this. See § 3, note 17.

(48). Iren. Haer. III. 18, 7 : It was incumbent on the Mediator between God and man to bring both to friendship and concord, and to present man to God while he revealed God to man. Tertullian, adv. Marcion II. 27, speaks of the sacrament of man's salvation, God dealing on equal terms with man, that man might be able to deal on equal terms with God.

(49). Suidas 2120 defines the clergy as *τὸ σύστημα τῶν διακόνων καὶ πρεσβυτέρων.*

(50). Clem. Strom. VII. 1 : Of the service bestowed on men the aim of one is edification, the other is ministerial. Apost. Const. III. 10 : The

tions are, therefore, only possible without a deacon when and in so far as they form part of the solemn Eucharist.

10. Of hierarchical orders there are properly three, viz., the episcopate, the presbyterate, the diaconate. Since the twelfth century the Western Church has admitted the subdiaconate also to the rank of a hierarchical order, because it now ranks as a holy order ([51]). Bishops have to do with the external government of the Church, both spiritual and temporal, and the relations of each part of the Church to all the other parts; presbyters and deacons with the internal government of some particular and local part of the Church, presbyters having the charge of its spiritual, deacons of its temporal concerns. Apart from being applied to all Christians collectively in a general sense, the term priest is used in a particular sense to describe one who represents the whole priestly people before God.

deacon is to minister. *Ibid.* VIII. 46: In Acts VI. 4 the Apostles claim prayer and teaching as their part of the sacerdotium, leaving it to the deacons to deal with the people's offerings. Hieronym. in Ezek. XVIII.: The deacon proclaims publicly in church the names of those who offer: A. has given so much, B. has promised so much. Apost. Const. II. 26: Let the deacon minister to the presbyter as Christ does to the Father. Epiph. Haer. 75, c. 5: Without a deacon there cannot be a bishop. Stat. Eccl. Ant. A.D. 505, Can. 37, ap. Gratian I. Dist. XCIII. c. 17: Let the deacons know that they are as much the ministers of the presbyter as of the bishop. Isidor. de Offic. II. 84, following Pseudo-Hieronym, *Ibid.* c. 23: Without the deacon the priest has neither the name, origin, nor [the execution of] the office; the deacon is called God's minister, as it is written, Whether is greater he that ministers or he to whom he ministers? and as the diaconate is included in the priesthood [Isidor.: As consecration rests with the priest], so the dispensing of sacramental gifts rests with the deacon. . . . So much has been given by the Lord to the diaconate that no priest alone may seem to perform and fulfil the whole service in the temple. Can. 16 Elfric, A.D. 957: The priest that remains without a deacon has the name, not the attendance of a priest. Making the solemn oblation is generally spoken of as offerre, προσφέρειν. The deacon's presentation is called ἀναφέρειν. A private consecration is conficere.

(51). Optat. Milev. Lib. II. p. 59: Whereas there are four kinds of heads in the Church—bishops, presbyters, deacons, the faithful—ye would not spare even one. Innocent III. in Decret. Lib. I. Tit. XIV. c. 9: Subdeacons we allow in case of necessity to be chosen bishops, because they wait at the altar.

Before the seventh century it was confined to the bishop, or the presbyter, his deputy, who made the solemn offering (52). Since the decline of solemn services and the establishment of dependent cures of souls in the twelfth century, it has been applied to all presbyters who, as incumbents of parishes, discharge priestly duties in quasi-solemn services (53), and to their deputies, the parish priests, who act for them when they are themselves disqualified to act (54). The extension of the term to presbyters in general belongs to comparatively recent times.

### Lower or Non-Hierarchical Orders.

11. Lower (55) or non-hierarchical orders are ranks of Christian men set apart and blessed for some service in the Church, but neither permitted to have any share in its government nor to meddle directly with holy things and the service of the altar. Although of great antiquity, they cannot be said to be of Divine institution, and are only of apostolic origin in so far as they are included in and share the duties of

(52). Cyprian Ep. 54, 5 uses the term God's priest (sacerdos) to describe the bishop. Concil. Agath. A.D. 506, ap. Gratian I. Dist. LXXXVI. c. 25: No bishop may slay any one with his own hand, for this is altogether alien from a priest. Concil. Antioch, A.D. 341, *Ibid.* I. Dist. XCII. c. 5, therefore orders a churchless bishop to retain the dignity of the priesthood. Pseudo-Isidor. Anaclet. 3, 28, A.D. 851: Sacerdotum ordo bipartitus est. The Saxon term preost is used of both bishops, priests, and deacons.

(53). Concil. Aquisgran. A.D. 806, Can. 8: Paul says that presbyters are truly priests. Walafrid Strabo de Reb. Eccl. c. 22: When a priest offers alone, those for whom he offers are co-operators in the same action, whom the priest also represents in certain answers. Hugo de St. Victor ap. Maskell, Mon. Rit. II. 245: Those who in the Old Testament were called priests are now called presbyters, chief priests are now called bishops.

(54). The parish priest, who is first mentioned by Concil. Westminster A.D. 1127, Can. 5, was a presbyter who assisted an incumbent but had no cure of souls himself, by doing all such acts as required order which the incumbent was unable to perform, either for lack of order, as if only a deacon, or from irregularity or otherwise.

(55). Concil. Nic. A.D. 325, Can. 3, calls them "those on the roll" (*οἱ ἐν τῷ κανόνι*). They are called "lesser clerks" in Const. 1 Reynolds, A.D. 1322.

the diaconate (56) or of some other apostolic office (57). There are two, if not three different aspects under which non-hierarchical orders may be regarded, viz., (1) as offices for bringing into the service of the Church temporal or spiritual gifts already inherent in their possessors; (2) as probationary steps before advancement to the sacramental gift of order (58); and (3) as degrees participating in the sacramental gift of order, but in an inferior measure.

12. As simple offices of hallowed service the number of lower orders is both indefinite and variable. The Roman Church in the third century counted four lower orders, besides the order of subdeacons, viz., acolytes or collets, exorcists, readers and door-wardens (59). With the exception,

(56). Apost. Const. VIII. 28 says that they are all ministers to the deacon. The Council of Trent, Sess. XXIII. Can. 2, refers them to the beginning of the Church. Devoti Lib. I. Tit. II. § 29; Duchêsne 330.

(57). In the apostolic age there were two kinds of Church officers — (1) officers with universal duties, the Apostles themselves, apostolic men, the 70 disciples, and 120 brethren who had known Christ in the flesh, and travelling apostolic delegates such as Timothy and Titus. These were variously called prophets, teachers and evangelists (Eph. IV. 11); and (2) officers with local duties, who administered and governed local Churches, presbyters or bishops, and deacons. On the dying out of the former class the universal duties of the Apostles and prophets appear to have passed to the chief-presbyters of the local Churches, who were then exclusively called bishops, the teachers' duties to the presbyters, and the evangelists' duties to the deacons. Some of the minor duties of the universal officers were committed to minor local officers, such as the reading and interpretation of prophecy to readers, casting out devils to exorcists. The localising of the bishop's office was the work of the sub-apostolic age.

(58). Apost. Const. VIII. 23: A confessor is not ordained, for he is so by choice and patience; c. 26: An exorcist is not ordained, for it is a trial of voluntary goodness. Const. 5 Peckham, A.D. 1279: That so clerks, while they are advancing to the mysteries of Christ, may sing together the song of degrees, when having found approbation in lower offices they gradually proceed to higher.

(59). Readers are mentioned by Tertullian de Praescrip. 41. Cornelius A.D. 251, in Euseb. VI. 43: [Novatus well knew that in the Roman Church] there were 46 presbyters, 7 deacons, 7 subdeacons, 42 collets and exorcists, readers, and door-wardens in all 52, widows with the afflicted and needy more than 1500. Duchêsne 331.

perhaps, of door-wardens (60), the Church of Carthage had the same number. The Church of Alexandria had a special order of catechists (61), the Gallican an order of psalmists or singers (62). In some Churches confessors ranked as an order (63); in others there was an order of interpreters (64); in others, again, there was an order of labourers or grave-diggers (κοπιάται or laborantes) (65); and in most Churches there were orders of virgins and widows (66), and of monks or ascetics (67).

13. As probationary steps for the worthy reception of the presbyterate the Roman Church of the fourth century employed three lower orders, those of subdeacons, collets, and exorcists (68), and required all adults to go through these three before being admitted to the diaconate or presbyterate. Those who entered the clerical life as children had to begin in the fourth order as readers (69). In the East there were, in a strict sense, never more than two recognised lower orders, those of subdeacons and readers (70). Collets were there unknown, as

(60). Cyprian Ep. 16 mentions readers and exorcists; Ep. 23 and 32, 2, readers and subdeacons.

(61). Clem. Hom. Ep. ad Jac. c. 13; Apost. Const. VII. 39; VIII. 32; Euseb. VI. 3.

(62). See note 90, and *Duties of Order*, § 46.

(63). Apost. Const. VIII. 23: A confessor is not ordained.

(64). Epiphan. Expos. Fidei c. 21.

(65). Ignatius ad Antioch. calls them κοπιῶντες. Hieronym. de Septem Ordinibus, p. 100, calls them *fossarii*. Some have supposed them to be collets. Devoti Lib. I. Tit. II. § 29.

(66). Widows are mentioned by Cornelius in Euseb. VI. 43; and virgins in Apost. Const. VIII. 24, 25. Other degrees by Pseudo-Ignat. Antioch. c. 12; Epiphanius Expos. Fidei c. 21; Concil. Antioch. A.D. 341, Can. 10.

(67). Concil. Laodic. A.D. 363, Can. 24, enumerates readers, singers, exorcists, door-wardens, ascetics. Basil. Epist. Can. II. ad Amphiloch c. 19.

(68). Duchêsne, p. 336: Martin of Tours commenced the clerical life as exorcist. At the Council of Arles, A.D. 314, of nine inferior clergy who came with their bishops seven were exorcists and two readers.

(69). Duchêsne, p. 334. They continued readers until old enough to exercise the higher degrees. Felix of Nola, Eusebius of Vercelli, the father of Pope Damasus, Popes Liberius and Siricius, all commenced as readers.

(70). Concil. Chalcedon, A.D. 451, Can. 14, only mentions readers and singers.

also in Ireland (71). Exorcists were looked upon as persons invested with extraordinary supernatural powers not bestowed by ordination (72). In both East and West, before the sixth century, door-wardens were regarded as simple servants of the Church. In the Gallican as in the Eastern Church, collets and exorcists appear originally not to have been regarded as orders, but in the sixth century not only collets and exorcists, but also psalmists or singers, were held to be an order (73).

14. From being regarded as probationary steps before admission to the sacramental gift of order, it was an easy transition to become regarded as participating steps in that gift. The transition took place in the Middle Ages, and was favoured by the current notion that ordination was effected by a kind of feudal investiture. The number of lower orders was then limited to four by the Roman Church, viz., those of door-wardens, readers, exorcists and collets, probably because these four, when united with the three hierarchical orders of sub-deacons, deacons and presbyters, make up the mystical number of seven; and it was conceived that at each step one of the sevenfold gifts of the Spirit was imparted (74). The Gallican Church, however, admitted five lower orders, viz., those of door-wardens, singers, readers, exorcists and collets, probably because these five, when united with the four hierarchical orders of sub-deacons, deacons, presbyters and bishops, make up the number of nine, and correspond with the nine orders of the celestial hierarchy (75). Modern writers sometimes distinguish door-

(71). See note 29.

(72). Apost. Const. VIII. 26: An exorcist is not ordained. Duchêsne 331.

(73). Stat. Eccl. Ant. A.D. 505, ap. Gratian I. Dist. XXIII.

(74). Const. 5 Peckham, A.D. 1279: The clerical army is fortified with seven orders, by every one of which a character is impressed on the soul, and an increase of grace is received. . . . Let such as receive them be publicly instructed in the vulgar tongue concerning the distinction of orders, offices, and characters, and of the increase of grace in every order to such as are found worthy receivers. Lomb. Sent. Lib. IV. Dist. 24; Hugo de St. Victor Lib. II. Pars 3, c. 5; Const. 1 Reynolds, A.D. 1322.

(75). Isidor. Hispal. Etymolog. VII. 12: Generally all are styled clerics who serve in the Church of Christ, whose degrees and names are these—

wardens, readers and exorcists as the three orders of the uncleansed, because it is their function to deal with those without—the door-warden's to teach those without their duties, the reader's to instruct catechumens, the exorcist's to prepare energumens. Collets, subdeacons, and deacons are then distinguished as the three orders of service, and the presbyterate as the order of priesthood.

### Ordination and its Essentials.

15. Although certain functions of order are, by virtue of the royal priesthood inherent in the whole body of Christians, allowed to be exercised by any authorised layman, such as reading (76), and others may in cases of necessity be exercised by any one, such as baptizing (77), yet under ordinary circumstances no one is permitted to discharge any of the higher or representative functions of order within the Church without being regularly called and ordained thereto (78). Without

door-warden, singer, reader, exorcist, collet, subdeacon, deacon, presbyter bishop. The order of bishops is fourfold, consisting in patriarchs, archbishops, metropolitans, and bishops.

(76). Cyprian Ep. 18 (Oxf. 24) speaks of one who "discharged the presbyter's functions" (presbyterium subministrabat). Ep. 23 (Oxf. 29) speaks of one "whom we had made next to the clergy in having intrusted to him once and again the reading." Euseb. VI. 19 relates that in 218 A.D. Origen was requested by the bishops [*i.e.*, the episcopal presbyters] of Caesarea to expound the Scriptures publicly in Church, although he had not yet obtained the priesthood by the imposition of hands. Apost. Const. VIII. 32, 15: Let the preacher, even should he be a layman, be skilled in the word. Monks were also allowed to preach until a decision in the year 1580 forbad them unless ordained.

(77). Tertullian de Bapt. c. 17. See *Baptism*, § 12.

(78). Socrates I. 27 relates that in 325 A.D. Ischyras had been guilty of an act deserving many deaths, for although he had never been admitted to holy orders, he had the audacity to assume the title of presbyter, and to exercise the sacred functions. So Petilian says to Augustin ap. Gratian Caus. I. Qu. I. c. 87: If any one learns the priest's chants (carmina) by heart, is he therefore a priest because with sacrilegious lips he publicly uses the priest's chant (carmen publicat). Const. 5 Thorsby, A.D. 1363, enumerates as one of the greater crimes: Where one ministers as a clerk without being ordained.

ordination some acts are in themselves invalid and nullities; others, whatever may be their value to those who use them in faith, are not sacramentally effective, because they do not carry with them the effect promised by Christ's institution to the united prayers of the Church ([79]). Others again are only so far invalid as to be irregular, and may be validated by a subsequent recognition on the part of the Church. It becomes then of importance to determine (1) what are the essentials for ordination, and (2) what things are necessary to give it validity and regularity.

16. As the term order, when spoken of the spiritual power which is bestowed on the ordained for his office, is used to express three entirely different things, so ordination or the means of conveying that spiritual power is used in three entirely different senses. (1) It is used to express the bestowal of a spiritual gift and the impressing of a sacramental character by the use of the proper matter and form, as when a person is said to be ordained presbyter or deacon. This is called by Gallican writers the benediction of order ([80]). (2) It is used to express the elevation to a dignity or position of rule over clergy of one who already possesses this spiritual gift, whereby it is hallowed and extended for the general government of the Church, as when one who is already a presbyter or deacon is ordained or advanced to the episcopate. This is usually called consecration ([81]). (3) It is used to express the authorised employment or recognition by the Church of a spiritual or natural gift, as when one who can exorcise or read is ordained to the

(79). Christ's promise was made to the disciples, not individually, but to the agreement or united prayer of two or three. Math. XVIII. 16, 19, 20; Mark VI. 7; XI. 1; XVI. 12; Cyprian de Unit. Eccl. c. 12; De Orat. Dom. c. 8; Cap. 3 Theodulf, A.D. 994. See *Baptism*, § 27.

(80). Gallican rite ap. Duchêsne 357: Sit nobis communis oratio, ut hic qui in adjutorium et utilitatem vestrae salutis eligitur, presbyteratûs benedictionem divini indulgentia muneris consequatur. Gildas, § 67, in H. & S. I. 76, speaks of those who "for a blessing give a cursing" by ordaining unfit persons.

(81). The term consecration is used in the Roman rite of all the higher orders, and also of the ordination of collets. Lacy's Pontifical, 83.

office of exorcist or reader. This is termed admission to minor orders, and sometimes institution (82).

17. In accordance with this difference of meaning there is a difference of practice as to the matter and form used in ordaining to the different degrees. In some cases a variety of outward signs are employed, and it is not always easy to determine which are essential, which are integral, and which are only accessory; in other cases a single sign only. The signs used as the matter comprise (1) the simple laying on of hands; (2) in some parts of the Church the more solemn form of it, anointing with oil or with chrism; and (3) in others again the remote and feudal form of giving it by the *porrectio instrumentorum*, or delivery of the instruments of office, including such symbolical acts as holding the Gospel-book over the head of the person to be ordained, or delivering it into his hand. The forms used are (1) for the lower degrees the use of words authorising the exercise of the office, together with a benediction; and for the higher degrees in addition (2) a litany, or general supplication of clergy and people that the Spirit may be poured forth on those about to be ordained, summed up and presented to God in the collect or consummation-prayer; and (3) a canon of benediction, combining with the prayers of the local Church the prayers of the Church of other places (83).

18. In regard to non-hierarchical orders, including the subdiaconate, the practice of the early Roman Church was to give admission to them without any solemn ceremony. Doorwardens, readers and exorcists were simply authorised by word of mouth to exercise their office. Even collets and subdeacons had only the symbols of office given to them with a short prayer at any private Eucharist (84), and the ordination took place after the communion (85). The collet's symbol was the linen sack

(82). Lacy's Pont. p. 79: Dicat episcopus instituendo ostiarium.

(83). Lacy's Pont. 85. The canon begins: Vere dignum et justum est aequum et salutare.

(84). Duchêsne 339: By the intercession of the blessed, glorious, and ever Virgin Mary, and the blessed St. Peter, may the Lord save, guard, and protect thee.

(85). Ménard, p. 271; Maskell Mon. Rit. II. 169.

in which the offerings of the people were collected; the subdeacon's, the empty chalice (86). If, as is held by many, the chalice availed for this purpose by reason of its being consecrated, the gift of it into the hand would appear to be a remote way of giving the laying on of hands. In the Greek Church both readers and subdeacons were and are ordained by a direct laying on of hands outside the sanctuary (87), and afterwards have delivered to them the symbols of office (88). Exorcists are not ordained at all, but are required to have the bishop's sanction to use their gift (89).

19. In the Gallican Church the remote mode of giving the laying on of hands by the delivery of the instruments of office from the altar was employed as a kind of feudal investiture for all orders above the singer's (90), and was the only sign used for the lower degrees (91). To the door-warden were given the keys of the Church with an injunction to use the office mindful of the account he would one day have to give (92); to the reader, the book

(86). John the Deacon, A.D. 496, ap. Migne LIX. 605: With us it is the rule that as soon as the most holy chalice has been received he is called subdeacon.

(87). Apost. Const. VIII. 22 names the reader; VIII. 21, the subdeacon; Syn. VII. A.D. 787, ap. Gratian I. Dist. LXIX. c. 1; Perrone Praelect. § 93.

(88). Morinus Exercit. XI. c. 7; Liebermann VI. 858: Among the Latins the instruments are given at the beginning of the rite, and are signs of the power which is being granted; among the Greeks they are given afterwards, and are signs of the power which has been granted.

(89). Apost. Const. VIII. 26: An exorcist is not ordained, for it is a trial of voluntary goodness. But Concil. Laodic. A.D. 363, Can. 26 ap. Gratian I. Dist. LXIX. c. 2 requires exorcists to be authorised by the bishop.

(90). Stat. Eccl. Ant. A.D. 505, Can. 10 ap. Gratian I. Dist. XXIII. c. 20: The psalmist, *i.e.*, the singer, can undertake the office of singing by the simple direction of the presbyter without the order of the bishop, the presbyter saying to him, Take heed that what thou singest with thy lips thou believest in thy heart, and what thou believest in thy heart thou showest forth by works. Concil. Martini, A.D. 572, *Ibid.* I. Dist. XCII. c. 3.

(91). Duchêsne 350.

(92). Stat. Eccl. Ant. A.D. 505, Can. 9 ap. Gratian I. Dist. XXIII. c. 19: When the doorkeeper is ordained, after having been instructed by the archdeacon how to conduct himself in the house of God, let the bishop, at the suggestion of the archdeacon, deliver to him from the altar the keys of

of lessons (93); to the exorcist, the book of exorcisms (94); to the collet, the cruets, the candlestick and a candle (95); to the subdeacon the paten and chalice by the bishop, and a pitcher, a napkin and a towel by the archdeacon (96). The mediaeval Church followed in general the Gallican use (97) in admitting to minor orders; but in the case of subdeacons, after the benediction had been pronounced over all together, the bishop delivered to each one separately a maniple or napkin, and gave to the epistoler-subdeacon only a tunic (98). Similarly in the case of

the Church, saying, So act as one who will render to God an account of the things which are unlocked by these keys. Egbert's Pontifical, A.D. 800, p. 11 (Surtees Society), and Leofric's Missal, p. 211, A.D. 1050, say the same. Lacy's Pontifical, A.D. 1450, p. 79, adds a prayer to that office.

(93). Stat. Eccl. Ant. Can. 8, *Ibid.* c. 18: When a reader is ordained, let the bishop address the people, pointing out his faith and life and qualification. Then in the sight of the people let him deliver to him the book from which he will read, saying, Receive and be a reader of God's word, and if thou faithfully discharge thy office thou shalt have part with them that minister the word of God. Egbert's Pont. p. 22; Leofric Missal, p. 212; Lacy's Pontifical, A.D. 1450, p. 80.

(94). Stat. Eccl. Ant. Can. 7, *Ibid.* c. 17: When an exorcist is ordained let him receive from the bishop's hand the book in which are contained the exorcisms, the bishop saying, Take and commit these exorcisms to memory, and receive power to lay hands on energumens, the baptized, and catechumens. Egbert's Pontif. p. 14; Leofric's Missal, p. 212.

(95). *Ibid.* c. 16: When a collet is ordained let the bishop instruct him in the duties of his office; but let him receive the candlestick and candle from the archdeacon, that he may know that his duty is to light the lights of the Church, and an empty cruet to remind him of wine for the Eucharist of the blood of Christ. Egbert's Pont. p. 13; Leofric Missal, 212; Lacy's Pontifical, p. 82.

(96). Stat. Eccl. Ant. *Ibid.* c. 15: When a subdeacon is ordained, because he does not receive the imposition of hands let him receive an empty paten and an empty chalice from the bishop's hand, and from the archdeacon's hand a pitcher with water, a napkin and a towel. Egbert's Pontif. p. 14; Leofric Missal, p. 213; Lacy's Pontifical, p. 83, says that (1) the bishop hands him an empty chalice and paten to touch, (2) the archdeacon hands him a bowl, a napkin, and water, then after the ordination prayer the bishop (3) hands to each one singly a maniple, and the tunic to the one who is to read the epistle.

(97). Lynd. 309; Perrone Praelect. 93; Craisson, § 1709.

(98). Lacy, p. 83.

collets, after handing to each one, as in the Gallican rite, the empty cruet, the candle and candlestick, he invited the people to prayer, and then in three short collects gave a thrice-repeated simultaneous blessing to all (99).

20. In bestowing the three higher orders the practice of the early Roman Church was equally simple; but because of their hierarchical character the ordination always took place with the greatest publicity at a solemn station (100) with the participation of all the clergy and people. The Litany having been first said before the Gospel was read the bishop laid both his hands on the head of each of the candidates for the diaconate successively, and pronounced over them collectively a collect (oratio) summing up the people's prayers on their behalf, and afterwards a canon of benediction (consecratio) (101). The solemnity was the same at the ordination of a presbyter or a bishop, but different collects and canons of benediction were used (102). At the consecration of a bishop the Bishop of Rome acted as the sole consecrator, and the like prerogative was probably enjoyed by the Bishop of Alexandria (103). In the case of the

(99). Lacy, p. 82.

(100). Acts XIII. 2: Whilst they were celebrating the Eucharist (λειτουργούντων αὐτῶν) . . . they laid their hands on them and sent them away. Apost. Const. VIII.; Duchêsne 340. The missa pro ordinatione presbyteri sive diaconi in Leofric's Missal, p. 214; Hieronym. ap. Gratian Caus. VIII. Qu. I. c. 15, quoted below, note 144. Benedict XIV. Op. IX. p. 248: The ordinands are ranged around the altar kneeling, and the bishop, as though he would teach them, slowly and deliberately pronounces the canon in a raised voice, not so that the people can hear but that the newly instituted priests can say it with him, and pronounce the words of consecration at one and the same time with the bishop.

(101). Duchêsne 342.

(102). *Ibid.* 344, 346. In Euseb. VI. 43, Cornelius, A.D. 251, says that Novatus, by the favour of the bishop laying his hands upon him, had been ordained to the order of presbyters.

(103). Breviarium Ferrandi, c. 6, in sixth century: Let not a single bishop ordain a bishop excepting the Roman Church. The Canon is from the Roman Council of 386 A.D., the words of exception being added by Ferrandus in view of the custom of the Roman Church. Duchêsne, p. 364. Concil. Nic. A.D. 325, Can. 6, preserves to the Bishop of Alexandria his privileges.

Pope himself, however, the consecration did not take place before the Gospel, but before the initial hymn (104). Three bishops, those of Ostia, Porto, and Albano, first said together the collect after the litany, whilst they held their hands upon the Pope-elect's head (105). Then the Bishop of Ostia alone recited the canon of benediction, whilst two deacons held the open Gospel above his neck. The Eastern Church, like the early Roman, ordained both bishops, presbyters and deacons by the laying on of hands (106) and making over them the sign of the cross (107), accompanied by the recitation first of a collect and then, after a litany, of a benediction.

21. In the Gallican Church the ritual for conferring hierarchical orders was far more elaborate. It included (1) the litany, the laying on of hands by the bishop and presbyters on deacons, as well as on presbyters (108), and the bishop's recital

(104). Innocent III. in Decret. Lib. I. Tit. VI. c. 28, A.D. 1202, says all ordinations take place between the epistle and gospel, except that of the Roman pontiff, who is consecrated before the *Gloria in Excelsis* or initial hymn. See below, § 32.

(105). Duchêsne 349.

(106). Euseb. VI. 19 relates that Origen had not yet obtained the presbyterate by the laying on of hands. Apost. Const. VIII. 16: When thou ordainest a presbyter, O bishop, lay thy hand upon his head in the presence of the presbyters. The Euchologion says: The high priest having his hand laid upon the candidate's head, says, The Divine grace . . . promotes the most pious deacon to the office of presbyter, wherefore let us pray for him. . . . Then after Lord have mercy, &c., follows [*the Collect*]. After the prayer the chief presbyter utters the following prayers usually said by the deacon. . . . [*A short litany.*] . . . And the high priest holding his hand still imposed upon him prays as follows, again to himself. . . . [*Here follows the benediction.*] . . . He then passes the stole round his [the ordinand's] neck, and vests him in a chasuble. Apost. Const. VIII. 4, 17; Liebermann VI. 861; Craisson, § 3967, discusses the question whether a Latin presbyter can be validly ordained by the Greek rite.

(107). Chrysost. Hom. 55 in Math.: The sign of the cross is made when we are appointed for ordination. Augustin. Serm. de Sanctis: Presbyters and Levites are promoted to sacred orders by the sign of the cross. Dionys. de Eccl. Hier. 5, 2, A.D. 500. Upon each of them the cruciform seal of the ordaining hierarch is impressed.

(108). Gelasian Sacramentary 144; Maskell's Mon. Rit. II. 205.

of the collect (consummatio) and benediction-canon (benedictio) —all probably derived from the Roman Church ; (2) the bishop's recital of the dedication-collect (consecratio) ([109]), and the anointing the hands of the deacon, and the hands and head of the presbyter and bishop ([110]), with a mixture of oil and chrism and the sign of the cross—which appears to represent the ancient Gallican mode of giving the solemn laying on of hands ([111]). To these were added after the seventh century (3) the delivery of the symbols of office ([112]). To the deacon were given the alb and stole ([113]), to the presbyter the stole and

(109). *Ibid.* 26 (622) ; Missale Francorum, Lacy's Pontifical, p. 89.

(110). Haddan and Stubbs, I. 141, suppose that this practice was derived by the Saxons from the old British Church. Gildas, c. 106, A.D. 570, in H. & S. I. p. 102, speaks of the benediction wherein the hands of priests (sacerdotes) and deacons are initiated [by anointing]. Leo Serm. VIII. de Pass. Domini ; Gregory in Reg. X. and Cap. 1 Theodulf, A.D. 787, mention it. Egbert's Pontifical, p. 35, A.D. 1000, directs the hands and head of the presbyter to be anointed with chrism, and the hands only of the deacon. So also Leofric Missal, p. 213 ; yet Nicolas, A.D. 864, ap. Gratian I. Dist. XXIII. c. 12, says that anointing was not then used at Rome. Innocent III. in Decret. Lib. I. Tit. XV. nevertheless requires it to be given, but says that it was not the use in Spain then, nor is it mentioned by Isidor. de Offic. IV. 5, in his description of the ceremonial of ordination. Duchêsne 335, 361, states that the unction of the hands only is mentioned in the ancient Merovingian rite. The unction of the head also was the practice in the time of Louis the Pious. See Amalarius de Eccl. Offic. II. 14; Maskell Mon. Rit. II. 223.

(111). Concil. Tolet. VII. A.D. 653, Can. 7 : Sacred chrism when once bestowed and the honour of the altar cannot be taken away. Stat. Eccl. Ant. A.D. 505, ap. Gratian I. Dist. XXIII. c. 7, mentions only pouring the benediction, because ordination was given by pouring oil and chrism.

(112). Concil. Tolet. IV. A.D. 633, ap. Gratian Caus. XI. Qu. III. c. 65, quoted note 113. Egbert's Pontifical 32 ; Leofric Missal 215 ; Lingard's Anglo-Saxon Church II. 26.

(113). Concil. Tolet. IV. A.D. 611, ap. Gratian Caus. XI. Qu. III. c. 65 : A bishop, priest, or deacon unjustly deposed from his degree, if he should be found innocent in a second synod, cannot be the same as he was before, unless he receive back his lost degree from the hand of the bishop before the altar ; if he was a bishop the stole, ring and staff ; if a priest, the stole and chasuble ; if a deacon, the stole and alb ; if a subdeacon, the paten and chalice. Concil. Brac. A.D. 563, Can. 9, forbids a deacon to wear the stole

planet (114), to the bishop the ring and staff (115). The open Gospel was, in addition, held by two bishops above the neck of a bishop at his consecration (116), as in the Eastern rite, and as is still the use in the consecration of the Bishop of Rome.

22. The Western Church in the Middle Ages followed the same composite ritual, but added thereto the formal delivery of the instruments of office which, in accordance with the feudal spirit of the times, soon came to be regarded as the essential matter. In ordaining to the diaconate the book of the Gospels was delivered to the candidate. This appears to have been originally a British custom, adopted in France, and introduced at Rome about the year 1000 A.D. (117). In ordaining to the presbyterate a third laying on of hands was introduced in the thirteenth century after the communion, accompanied by words authorising the new presbyter to act as an ordinary penitentiary (118). In ordaining to the episcopate the custom of delivering the book of the Gospels to the bishop-elect at the end of the service was added to or substituted for that of holding it over his head at the beginning (119), and in some rites as early as the thirteenth century, but in the Roman not until the fifteenth, the words, "Receive the Holy Ghost," were addressed to the

hidden under the tunic, so as not to differ from a subdeacon, but to wear it across the shoulder. Concil. Tolet. IV. A.D. 633, Can. 40 : The deacon ought to wear one stole only over his left shoulder, and have his right side free, that he may be able to wait upon the sacerdotal ministry.

(114). Concil. Tolet. IV. l. c.

(115). *Id. Ibid.* Isidor. de Orig. Offic. II. 5, 12 : The staff is given to show that he rules, corrects and restrains the infirmities of the people committed to his care. Innocent III. in Decret. Lib. I. Tit. XV. says that the Roman bishop has no staff.

(116). Stat. Eccl. Ant. Can. 2, ap. Gratian I. Dist. XXIII. c. 7 : When a bishop is ordained let two bishops place the book of the Gospel on his head, and hold it over his head, whilst a third pours the benediction [the oil and chrism] over him, and let all the other bishops who are present lay their hands on him. Egbert's Pont. 32 ; Leofric Missal 215 ; Duchêsne 361. According to Apost. Const. VIII. 4, the practice in the East was similar.

(117). Maskell Mon. Rit. II. 233, followed by Warren, Celtic Church.

(118). Maskell Mon. Rit. II. 233.

(119). Liebermann l. c. Lacy's Pontifical.

bishop-elect by each of the assisting bishops at the initial laying on of hands (120).

23. The manner of consecrating a bishop in this country, as prescribed for the diocese of Exeter in the fifteenth century, was as follows: Before the Eucharistic service began, the elect was interrogated and made his profession. The consecrator then invited the people to prayer, and the litany was said. At its close the consecrator laid both his hands upon the head of the elect, saying, "Receive the Holy Ghost." All the other bishops present did the same. Then the hymn, "Come, Holy Ghost" (121) was sung, after which the consecrator, holding his hands closed before his breast, and not extended as in the Roman rite, pronounced over the elect the collect and canon of benediction. The new bishop's head was then anointed with a mixture of oil and chrism, or with chrism only if the Roman use was observed, whilst the prayer of unction was said (122). The dedication-collect followed, after which the new bishop's hand and thumb were anointed, or, as it was said, were confirmed. The pastoral staff, the ring, and the mitre, were successively blessed and presented to him, and finally the book of the Gospels (123).

24. At the ordination of a presbyter the litany was first said; then the bishop laid his right hand alone upon each

(120). Gregory XII. is said to have first used these words in consecrating Archbishop Chichele in 1408 at Siena. See Hutton's Anglican Ministry, 324; Lacy's Pontifical, A.D. 1450, p. 95.

(121). Maskell Mon. Rit. II. 223 says that it was introduced late in the eleventh century, and is first met with in a Pontifical of Soissons.

(122). Innocent III. in Decret. Lib. I. Tit. XV. says that the head is anointed because of authority, and the hands because of office and ministry. Gregory IX. *Ibid.* Tit. XVI. c. 3. The prayer of anointing for a bishop began: May these hands be anointed [for a presbyter the word *consecrated* was used] with holy oil and the chrism of sanctification, as Samuel anointed David to king and prophet, &c.

(123). Lacy's Pont., p. 99, states that it was the Roman custom, from the time of Pope Melchiades, for the newly consecrated bishop to offer two large loaves, two amphorae of wine, and two wax candles, but that "the English Church does not observe the oblations."

of the candidates' heads in turn (124), the assisting presbyters meanwhile holding their hands extended over the heads of all (125); or, if following the Roman custom, he laid both his hands in silence upon the heads of each of the candidates in turn, the presbyters following him and doing the same. This was called the first laying on of hands. Next the bishop invited the people to join in prayer with the rest of the Church on behalf of those about to be ordained, and, returning to his seat, held his hands extended over all the candidates, the presbyters about him continuing to do the same, whilst he alone recited the collect and benediction-canon once and for all (126). This was called the second laying on of hands, but was really a continuation of the first. The stole was then passed round the neck of each of the ordinands (127), and they were vested in chasubles. The dedication-collect followed (128). Then the hymn, "Come, Holy Ghost," was sung, and the hands of the ordinands were severally anointed with a mixture of oil and chrism with the sign of the cross (129), whilst the prayer of anointing was being said. In the older English rite the head also was anointed, and the chasuble was not

(124). Lacy's Pont., p. 87: In the Roman rite the bishop lays both his hands upon the head of each.

(125). Lacy's Pont., p. 87: All his attendants, who are presbyters, hold their hands above the heads of those to be ordained.

(126). Stat. Eccl. Ant. Can. 3, ap. Gratian I. Dist. XXIII. c. 8: When a presbyter is ordained, whilst the bishop blesses him and holds his hand on his head, let all the other presbyters who are present lay their hands on his head beside the hand of the bishop. Duchêsne 357.

(127). Leofric's Missal 215 gives the benedictio ad stolas vel planetas, but makes no mention of the stole (orarium). Lacy's Pontifical, p. 89.

(128). Lacy's Pontifical calls it consecratio, and has the Roman prayer: Deus sanctificationum omnium auctor.

(129). The prayer at the anointing of the hands in Egbert's Pontifical, p. 24; Leofric Missal 215; and Lacy's Pontifical, p. 90: May these hands be consecrated and hallowed by this anointing and our benediction, that whatsoever they shall bless may be blessed, and whatsoever they shall hallow may be hallowed. According to Lacy's Pontifical the anointing was made with holy oil mixed with chrism. Devoti Lib. I. Tit. IV. § 5 says that the present Roman practice is to anoint the presbyter's hands with the catechumens' oil. Lingard, Anglo-Saxon Church II. 23.

put on until this anointing was completed (130). Afterwards, the bishop, closing the hands of each new presbyter, delivered to him a chalice containing water and wine, and a paten containing bread, and instructed him to offer for the living and the dead (131). At the communion which followed, the newly ordained were communicated before all others, and immediately after the communion the bishop alone, laying his right hand for the third time upon the head of each one, said to him separately: "Receive the Holy Ghost. Whose sins thou dost remit they are remitted, and whose sins thou dost retain they are retained. Brother, pray for me" (132).

25. In ordinations to the diaconate a collect and canon of benediction were used, as in ordaining to the episcopate and presbyterate, but the litany was not invariably said (133), and the bishop gave to each one a stole and the book of the Gospels (134). The dedication-collect followed, but there was no anointing, either with oil or chrism, as had in former days been the English use. Only a dalmatic was given to the Gospel-deacon (135).

26. Considerable difference of opinion prevails as to which

(130). Maskell Mon. Rit. II. 221 and 223.

(131). Innocent III. in Decret. Lib. I. Tit. VI. § 28.

(132). Liebermann VI. 860; Lacy's Pontifical, p. 91. This third imposition of hands is absent in the Winchester and all earlier Pontificals. In the modern Greek Church the power to act as a confessor is bestowed at a separate occasional office (ἀκολουθία), called an office "for appointing a spiritual person."

(133). Lacy's Pontifical, p. 84: It is the practice of some prelates to call at once those to be ordained deacons and presbyters, and when they have been introduced the bishop prostrates himself before the altar, whilst the litany is said by the choir. But some say the litany only in the ordination of presbyters. Maskell Mon. Rit. II. 202.

(134). Liebermann VI. 859; Lacy's Pont., p. 86; Maskell Mon. Rit. II. 210 states that this practice dates from the eleventh century in the Roman Church. It was originally an English custom, and is not found in any non-English Pontifical before the tenth century.

(135). Maskell Mon. Rit. II. 212 states that the practice of giving the tunic to the subdeacon and the dalmatic to the deacon was adopted first in the case of monks in the twelfth century, and in the English Church in the thirteenth.

of these outward acts constitutes the essential matter in ordination, but the point is only of importance in regard to holy orders. (1) It was held by the older Schoolmen, at a time when great importance was attached to feudal investiture, that the delivery of the instruments of office was the only essential matter, as being the operative mode of giving the imposition of hands (136). (2) More recently this view has been denied, and it is contended that the laying on of hands cannot be given remotely by the delivery of the instruments of office (137). (3) Some, nevertheless, maintain that wherever the custom prevails, the delivery of the instruments of office is so necessary to complete the imposition of hands that without it the validity of the whole act is doubtful (138).

27. In support of the first view it is urged that since Christ Himself ordained the Apostles by inbreathing (139), whereas the Apostles ordained others by the laying on of hands (140), it is clear that the matter in ordination must have been left undetermined by Christ, that as a matter of fact it has varied from time to time, and that, at least in the Western Church, the use of the last thousand years has constituted the delivery

(136). Eugenii Decretum, A.D. 1439, ap. Harduin IX. 440, and Devoti Lib. II. Tit. II. § 98 : The matter of order is that by the delivery of which order is conferred, as the presbyterate by the delivery of the cup with wine, and the paten with bread. Lynd. 309 : Neither the benediction, the imposition of hands, nor other matter, all of which are preparatory, constitute ordination, but the character is impressed by the delivery of the ministerial symbols. Some modern Jesuits still hold that the benediction, laying on of hands and anointing are the preparation, the delivery of the instruments of office being the bestowal of the power of order.

(137). Perrone Praelect. § 95 ; Craisson, § 1709 ; Le Brun III. 264 ; Gasparri Tract. de Ordinat. n. 1079 : We conceive the matter of the whole sacerdotal ordination to be the imposition of the bishop's hands, either the first or the second one, which is a continuation of the first.

(138). Hutton's Anglican Ministry, 245. On the contrary, see Duchêsne in *Guardian*, Aug. 22, 1894, p. 1296.

(139). John XX. 23. Iren. Frag. 21 : He does not give as Christ gave by inbreathing, because he is not the source of the Spirit.

(140). Acts VI. 6 ; XIII. 3 ; 1 Tim. IV. 14 ; 2 Tim. I. 6.

of the instruments of office the received mode of giving the laying on of hands (141). In support of the second view an appeal is made to antiquity (142), and the continuous practice of the Eastern Church (143). It is shown (1) that the delivery of ring and staff to the bishop, and of the Gospel-book to the deacon, are mediaeval usages, confined exclusively to the West; (2) that the delivery of the paten with bread and the chalice with wine to the presbyter to consecrate are parts of the ceremonial of every solemn Eucharist, and presuppose that those to whom the delivery is made are already ordained; and (3) that vesting the presbyter in planet and stole, the deacon is alb and stole, and holding the book of the Gospels above the bishop's head, cannot constitute ordination, since

(141). F. Haller ap. Morinus Pars. II. : Of order, penance and matrimony Christ instituted the matter generally, leaving to the Church to determine it particularly.

(142). Morinus de Sacr. Ord. III. Exer. I. c. 1, Menardus and Martene have conclusively shown that the delivery of instruments was unknown before the 9th century. The order for restoring one degraded in Maskell Mon. Rit. II. 335 runs : You shall not reordain one deposed, but you shall restore him to his degree by giving him the instruments and vestments pertaining to his degree.

(143). Clem. Hom. III. 72 : Peter placed his hand upon Zacchaeus, saying. Cornelius ad Cyprian, A.D. 251, Ep. 45, 1 : They suffered hands to be imposed upon him as if upon a bishop. Concil. Antioch, A.D. 341, Can. 17, ap. Gratian I. Dist. XCII. c. 7 : A bishop is ordained by the imposition of hands. Chrysost. Hom. XIV. 3 in Acts VI. 6 : This is the laying on of hands (χειροτονία) : the hand of the man is laid upon the other, but all the working is of God, and His hand it is which touches the head of him who is ordained, if he be ordained aright. Basil Ep. 188, quoted note 20. Hieronym. in Isai. LVIII. 10 : The ordination of clergy is completed (impletur), not only at the praying of the voice (ad imprecationem vocis), but also at the laying on of hands. Isidor de Orig. Offic. II. 5, 9 ; Baeda de Remed. I. 281 : Let the priest provide his furniture before the hand of the bishop touches his head. Gregory ap. Gratian Caus. I. Qu. II. c. 4, and Decret. Lib. V. Tit. III. c. 1 speaks of the bishop selling the hand which ordains (quam imponit). Decret. Lib. I. Tit. XVI. c. 3 : The priest and the deacon when they are ordained receive the imposition of hands by corporal touch, by a rite introduced by the Apostles. Morinus III. 7, c. 1 : Gousset Théologie Dogmatique II. 425 ; Liguori VI. 749 ; Liebermann Inst. Theol. VI. 856.

these acts were formerly performed by a deacon (144), but are merely an assignment to the ordained of his position in the Church (145). If then to bestow the sacramental gift the laying on of hands either directly or indirectly is held to be the essential matter, it is generally allowed that the second laying on of hands at which the benediction is given (146), (which is morally a continuation of the first laying on of hands), or in the Gallican rite the anointing with oil and chrism in the form of a cross, which in that rite is the most solemn form of giving the laying on of hands (147), is the effectual matter. The third laying on of hands is a comparatively recent addition, its object being not to ordain, but to give to one already ordained authority to act as a penitentiary.

28. The essential form in ordination is also a matter of dispute. It was held by the older Schoolmen to consist in the words which accompanied the delivery of the instruments of office; by others in the words, Receive the Holy Ghost, addressed to the bishop at the first imposition of hands, and to the presbyter at the third; by others in both forms of words; by others again in the prayer, *Deus honorum omnium* (148). By the words accompanying the delivery of the paten and chalice

(144). Roman Ordinal of ninth century ap. Duchêsne 460: Then the archdeacon vests the presbyters in planet and stole, and conducts them before the Pontiff. Aquinas observes that the sacerdotal vestments signify fitness, not power.

(145). Concil. Tolet. IV. A.D. 633, quoted note 113, and see note 142.

(146). Pseudo-Ambros. de Dignit. Sacer. I. c. 5, ap. Migne XVII. 577: Man lays on the hand, God gives the grace. The bishop (sacerdos) imposes the right hand in supplication, and God gives the blessing with His own powerful right hand. The bishop (episcopus) initiates order [*i.e.*, the position in the Church], and God gives the dignity [*i.e.*, the spiritual gift].

(147). Theol. Tolos. de Ordine ap. Craisson, § 2733; Steph. Eduensis de Sacram. Altar. c. 9: The hands of the priest, which are signed with holy oil in the form of a cross, are confirmed by the hands of Christ; and that is a singular and health-giving miracle which they perform between the hands of Christ, who says, Without Me ye can do nothing. See note 110.

(148). The month November 1894, p. 385.

the presbyter, it is said, receives power over Christ's true Body and authority to consecrate the Eucharist (149); by the words accompanying the third imposition of hands he receives power over Christ's mystical Body, and authority to retain and remit sins (150). Allowing that these words convey authority or a commission from the Church, this authority or commission depends, nevertheless, in each case for its efficiency upon the gift of the Spirit obtained from above by the prayers which immediately precede them (151). Hence it appears that the

(149). Eugenii Decretum, A.D. 1439, ap. Labbé XVIII. 550: The form of the priesthood is such as: Receive power to offer the sacrifice in Church for the living and the dead, in the name of the Father, &c.

(150). Hilary, A.D. 375, Quaest. in Vet. et Nov. Test. XCIII.: When the Lord is said to have breathed on His disciples after His resurrection, and to have said, Receive the Holy Ghost, ecclesiastical power is understood to have been conveyed to them [*i.e.*, the power of acting for the Church, to which the forgiving or retaining of sin belongs]. He adds, Whose sins, &c.

(151). In 1 Tim. IV. 14 this prayer is called *προφητεία*. Apost. Const. VIII. 46: Those that are by us named bishops and presbyters and deacons were made by prayer and the laying on of hands. Theodoret in 1 Tim. v. 22: We ought first to examine the life of the man, and so to invoke upon him the grace of the Spirit. See *The Sacraments*, §§ 9, 13; Concil. Hispal. II. A.D. 619, ap. Gratian I. Dist. XXIII. c. 13, declared an ordination invalid in which "the bishop had laid his hand on the candidates' heads, and a presbyter, contrary to ecclesiastical order, had given the benediction." Concil. Aurel. V. A.D. 549, Can. 4: If any clerk, after receiving the benediction of his place or order, &c. Ordo Sti. Amandi ap. Duchêsne p. 460: Et accipiunt orationem presbyterii a pontifice. Isidore de Offic. II. 27, 3: We can receive the Holy Spirit, but we cannot give it. We only invoke the Lord that it may be given. *Id.* Sent. III. 7, 3: When any one prays he calls to himself the Spirit. In the Greek form for the ordination of a deacon, ap. Morin. de Sacr. Ord. pt. II. p. 69, the bishop prays: Not through the laying on of my hands, but by the visitation (*ἐν ἐπισκοπῇ*) of Thy rich mercies is grace given. Duchêsne, p. 345, says that the whole rite of ordination of presbyters and deacons consisted, according to the early Roman use, in prayer. Theodoret of Cyrus Relig. Hist. XIX. relates how a bishop "surreptitiously laid hands" on some one, "and performed the prayer, and then made plain to him the grace which had come upon him." Benedict XIV. de Syn. Dios. VIII. 40; Liebermann VI. 861; Gasparri de Ord. VI. 1079: We hold that the form in ordination is "the preface" [*i.e.*, the canon of consecration beginning, It is very meet, right, &c.], as in the ancient Roman rite.

collect which sums up the prayers of the people present on behalf of the ordinand, and the benediction which unites to these prayers the prayers of the Church of other places (which is the old Roman use), or the dedication-collect which is the Gallican equivalent (152), constitute the essential form of which all the other prayers and declarations are only extensions (153). The collect and benediction appear also to be the essential form in ordination to the episcopate, and not the words, Receive the Holy Ghost, since the latter words are of late introduction, and only serve to define by anticipation the object for which the collect and benediction are about to be offered (154). It has, however, been held that the words, Receive the Holy Ghost, will alone suffice for the ordination of a presbyter, provided they have been used immemorially by consent of the Church for that purpose, and with the intention of bestowing the sacramental character of the presbyterate (155).

(152). That the dedication-collect, which followed the anointing, was regarded as the essential form in the Exeter Pontifical would seem to be implied by its being preceded by the hymn, "Come, Holy Ghost," and its being technically called *Consecratio*.

(153). Hutton l. c.

(154). Liebermann VI. 859. See above, note 20.

(155). Decree of Holy Office, 9th April 1704, in the case of the Abyssinians, quoted in Estcourt's Anglican Ordination, p. 191. In the year 1733, Joseph Assemann, in Mai's Scriptorum Veterum Nova Collectio, vol. v., quoted in *Guardian*, 28th Feb. 1894, made the following report, by request, to the Sacred College: With regard to the Episcopate there are three opinions—(1) The first regards as the *matter* the imposition of hands upon the head of the person to be consecrated, the placing of the Gospels upon his head, the anointing, and the presentation of the pastoral staff and ring; and as the *form*, the words which are said by the consecrator in the act of placing his hands and the Gospel upon the head of the person to be consecrated, and in the act of anointing, and of handing the staff and ring. This is the view of Isambert and Durand. (2) The second view makes the *matter* to consist in the imposition of hands, and in placing of the Gospels upon the head of the person being consecrated, and the *form* to be simply the words, "Receive the Holy Ghost." This was the view of Antonine, Ostian, and Turriano. (3) The third places the *matter* simply in the imposition of hands, and

### Valid and Regular Ordination.

29. Besides the essentials of ordination three things are necessary to make it valid and regular: (1) It must be given by persons properly qualified to give it; (2) it must be given in a regular manner; (3) it must be given to those who are fit subjects to receive it. Ordination is called invalid when it conveys no spiritual gift or power of order ([156]), irregular when it is valid in itself but conveys no position in the Church. The irregular recipient is capable of performing every function of order, but the exercise of the spiritual gift is either impeded through some fault of his own, or forbidden by the Church ([157]).

the *form* in the prayer said by the consecrator. This is the view of Morin and Juenin. As to the ordination of presbyters there are four views—(1) The first regards the imposition of hands of the bishop on the person to be ordained to be alone the *matter*, and the prayer recited by the bishop to be the *form*—Morin and Juenin. (2) The second view conjoins for the *matter* of the sacrament the anointing of the presbyter with the imposition of hands, and for the *form*, besides the other prayers, the prayers which are then said—Cardinal Hosius. (3) The third regards the imposition of hands, together with the tradition of the chalice with wine and water and of the paten with bread, as the *matter*, and the words, "Take thou authority to offer the sacrifice to God," to be the *form*—Maldonatus and others. (4) The fourth is the ordinary view of the moderns, and regards the tradition of the chalice with wine and water, and the paten with bread, to be alone the *matter*, and the words, "Take thou authority," &c., to be the *form*.

(156). Concil. Hispal. II. Can. 4 ap. Gratian I Dist. XXIII. c. 13, speaks of an invalid ordination as one in which non consecrationis titulum, sed ignominiae potius elogium acceperunt.

(157). Concil. Nic. A.D. 325, Can 16: ἄκυρος ἔστω ἡ χειροτονία. Can. 9: Such as these the canon does not admit. Can. 6: Such an one the synod has determined shall not be a bishop. Concil. Antioch, A.D. 341, Can. 22; Concil. Arelat. I. A.D. 314, Can. 13; Concil. Sardic. Can. 15; Concil. Chalcedon A.D. 451, Can. 6. In all these cases the ordination must have been held valid, because Concil. Turon. A.D. 460, Can. 10, says: We reduce them to nullity (in irritum devocamus), unless they are adjusted by satisfaction which pertains to peace. Concil. Hispal. II. A.D. 619, Can. 4, orders such an ordination to be annulled (in irritum devocari). Concil. Ilerd. A.D. 523, Can. 12: In cases in which men have hitherto been

30. It is a rule of the Church, derived from its fundamental note of unity, that nowhere can there exist the right and power to ordain apart from the representative head and the ruling authorities (158). The bishop is, therefore, the ordinary minister of order (159). Some difference of opinion, however, exists as to who may be the extraordinary minister when no bishop can be had. Most of the ancient canonists and theologians maintain that, since the episcopate and presbyterate constitute one and the same order, all degrees of order, excepting the episcopate (160), may be conferred by presbyters equally with a bishop, provided they have received for that purpose a commission from the Church (161), and that the presbyters col-

ordained against the canons, it may be looked over . . . but those who in future shall be so ordained shall be deprived. Concil. Regin. A.D. 439, Can. 2: We decree that the ordination be evacuated which the canons declare to be a nullity. Devoti Lib. II. Tit. II. § 100; Gregory VII. ap. Gratian Caus. I. Qu. I. c. 113, calls some ordinations "falsas." Urban II. A.D. 1095, *Ibid.* Caus. XII. Qu. II. c. 37: Irritas judicamus.

(158). Ignat. Trull, c. 3: Apart from bishops, presbyters, and deacons it cannot be called the Church. Hieronym. adv. Lucifer. c. 8: That is not the Church which has no priests (sacerdotes bishops). Amalarius de Eccl. Offic. III. 2: The Church is the people assembled with their ministers.

(159). Ignat. Smyrn. c. 9; Cyprian Ep. 4; Apost. Const. VIII. 28: A bishop lays on hands, ordains, offers. . . . A presbyter lays on hands, but does not ordain; VIII. 40.

(160). Heb. VII. 8: The less is blessed by the greater.

(161). Morinus de Sacr. Ord. III. Exer. IV. c. 3 and 4; Liebermann VI. 865; Firmilian ad Cyprianum Ep. 74 (Oxf. 75), 7: All power and grace are established in the Church where the presbyters preside, who possess the power both of baptizing and of imposition of hands, and of ordaining. Lynd 309 quotes with approval a canonist saying: In the primitive Church [as described by Hieronym. ap. Gratian I. Dist. XCIII. c. 24] there was no difference between a presbyter and a bishop; but because presbyters ordained indiscriminately, Peter and the other Apostles put under restraint their power of order (potestatem characteris), so that they could not bestow the sacraments which are now reserved to bishops, and they created in consequence certain persons having this power whom they called bishops. When, therefore, a bishop is consecrated that restriction of order is relaxed, and is extended to the previously forbidden sacraments. Hieronym. Epist. 146 says that at Alexandria, from the time of St. Mark to that of Dionysius [A.D. 260], the presbyters always placed one chosen from themselves on the

lectively of any Church which has no bishop may therefore validly confer all orders. Others contend that a presbyter's power is limited to giving non-hierarchical orders (162), including the subdiaconate (163); others again that it does not go beyond the power of ordaining or appointing a singer (164) and giving

higher platform, and called him bishop [unum ex se electum in excelsiori gradu collocatum episcopum nominabant]. If this was ordination, it was the peculiar prerogative of one of the three great patriarchal Churches, and is no precedent for a lesser Church where that custom has never prevailed. Estcourt's Anglican Ordinations, p. 121; Weizsaecker, p. 638, surmises that in early times there were two classes of presbyters, (1) ordinary presbyters and (2) episcopal presbyters, but that after the Novatian schism episcopal presbyters were everywhere reduced to one. The only Church in which a plurality of them is still found is the Church of Rome. See Thom. Aquin. IV. Sent. 7, Qu. 3, art. 1; Durand 4, Dist. 7, Qu. 4, § 4, 21; Craisson, § 1731; Lightfoot Apost. Fathers II. 120; Hooker, vol. III. pt. I, p. 286, says: There may sometimes be very just and sufficient reason to allow ordination without a bishop; but Concil. Hispal. II. A.D. 619, Can. 5, ap. Gratian I. Dist. XXIII. c. 13, declared an ordination invalid in which the bishop had laid his hand on the head of the candidates and a presbyter had pronounced the benediction canon, and ordered those who had received it to be removed from the ranks (a gradu abjici) of presbyters and deacons.

(162). Innocent III. in Decret. Lib. I. Tit. XIV. c. 11, permits an abbot of regulars in priest's orders, who has received the benediction, to bestow minor orders. Craisson, § 1722, 1991; Gratian I. Dist. LXIX.

(163). The opinion is held by many authorities that such ordination may suffice for the subdiaconate, but doubts are entertained as to its sufficing for the diaconate. Craisson, § 1723; Perrone Praelect. de Ord. § 103 and 104, who, however, appears to forget that any priest who appoints another to act as server constitutes him a deacon in office, *pro hac vice*. Cavagnis II. 106 considers that a priest can ordain a deacon if properly authorised so to do. Novatus, the African presbyter, appointed (constituit, which some render "procured to be ordained") Felicissimus a deacon, and Cyprian Ep. 48 (Oxf. 52) does not pronounce it invalid. According to Cassian Collat. 4, 1 ap. Migne Patrol. XLIX. 585, Paphnutius, a presbyter, appointed Daniel, a monk, both deacon and presbyter. Anskar Vit. S. Willehad, c. 5, ap. Pertz. M. H. G. Script. II. 381: The servant of God, Willehad, began to build Churches, and to set over them presbyters (presbyteros super eas ordinare). Hutton, p. 187.

(164). Statuta Eccl. Ant. A.D. 505, Can. 10 ap. Gratian I. Dist. XXIII. c. 20: A psalmist, *i.e.*, a singer, can undertake the office of singing without

the tonsure. However this may be, one thing seems clear, that since presbyters do not now receive authority, either collectively or individually, to ordain, they cannot by their own act or prayers effect an ordination which the Church at large can receive as regular (165).

31. Although in the first ages of the Church no act of ordination was done by the Apostles except collectively and as a body (166), yet now a single bishop is allowed to ordain a deacon or a presbyter (167), because of the perpetual intercession which is made by the whole Church on his behalf (168). Yet, even now, without the concurrence of the presbyters, testified by the imposition of their hands and the expressed or implied consent of the people, he cannot lawfully ordain a presbyter, because his representative powers have been committed to him not for capricious use, but to be exercised together with the presbyters on behalf of all (169). For this reason a bishop is

the bishop's knowledge, by the simple order of a presbyter. Apost. Const. III. 11 forbids presbyters to ordain deacons or deaconesses, or readers, or singers, or door-wardens.

(165). Apost. Const. III. 10, 11, 20 ; VIII. 46 : Nor must either a presbyter or a deacon ordain from the laity into the clergy. Concil. Hispal. II. A.D. 619, ap. Gratian I. Dist. LXVIII. c. 4, in forbidding this and other things to presbyters as well as to rural bishops, seems to imply that, but for the prohibition, they had the inherent power of ordaining. Devoti Lib. I. Tit. I. § 23 Nic.

(166). In Acts VI. 6 the Apostles in the plural laid their hands on the deacons.

(167). Concil. Hispal. II. A.D. 619, Can. 3, ap. Gratian I. Dist. LXVII. c. 2 : A single bishop can bestow the honour of the presbyterate or diaconate, but a single bishop cannot take either away. Edgar's Law 2, A.D. 960.

(168). Concil. Clovesho, A.D. 747, Can. 30, requires prayers to be made by every presbyter for the bishop. Edgar's Law 67, A.D. 960, requires every priest to give an account of how he has fulfilled this obligation. See *Duties of Order*, § 24, 28.

(169). Clem. Ep. I. c. 44 : Those appointed by the Apostles with the consent of the whole Church cannot be justly dismissed. Cyprian Ep. 23 (Oxf. 29) accounts to his clergy for certain ordinations : Nothing new has been done by me, but what upon the general advice of all of us had been begun. Also, Ep. 32 (Oxf. 38). Cornelius, A.D. 246, in Euseb. VI. 43, states

only allowed to ordain so long as he acts in accordance with canonical rules (170), and a rural bishop who has no regularly constituted Church or body of advising presbyters is forbidden to ordain a presbyter at all (171).

32. A single bishop can also bestow episcopal consecration if he is a metropolitan who by custom enjoys that privilege,

that as all the clergy and many of the laity resisted the ordaining of Novatus, the bishop requested that he might be permitted to ordain this one. Socr. I. 9, says that the Council of Nicaea decreed, A.D. 325, that such presbyters as had been found in no schism should have power to nominate and propose for ordination those who were worthy of the sacred office. Pseudo-Sylvestrian Council, Can. 7, A.D. 275, forbids a bishop to ordain nisi cum omni adunata ecclesia. Teaching of the Apostles, Can. 17: It is not permitted to the Guide (bishop) to transact matters which pertain to the Church apart from those who minister with him. Hieronym. ap. Gratian Caus. VIII. Qu. I. c. 15: At the ordination of a presbyter the presence of the people is necessary, that all may know that he who is superior to all the people, and more learned and more holy and more eminent in every way, is selected for the presbyterate. Stat. Eccl. Ant. A.D. 505, Can. 22, *Ibid.* I. Dist. XXIV. c. 6: Let not a bishop ordain clergy without the consent of his clergy. In Apost. Const. VIII. 16 the bishop prays: Look down upon this Thy servant who is put into the presbytery by the vote and determination of the whole clergy. Egbert's Excerpt 46, A.D. 740: Let the rector (bishop) do nothing without consent of his brethren. Concil. Nannet. A.D. 895, *Ibid.* c. 5; Gregory VII. *Ibid.* Caus. I. Qu. I. c. 113: Ordinations made without the common consent of clergy and people we judge to be false, since those who are thus ordained do not enter through the door, *i.e.*, Christ, . . . but are thieves and robbers. Urban II. *Ibid.* Caus. XII. Qu. II. c. 37: Ordinations of persons . . . made without the common consent of the clergy we judge to be nullities (irritas). Great stress is laid on the *commune votum* and *communis oratio* in the Gallican forms quoted by Duchêsne, pp. 355, 357.

(170). Concil. Antioch, A.D. 341, Can. 9 ap. Gratian Caus. IX. Qu. III. c. 2, allows each bishop to administer his diocese, "so that he may ordain presbyters acting with approved judgment." Concil. Taurin. A.D. 401, Can. 3: If any one hereafter acts contrary to the rules of the fathers, let both him who is ordained be deprived of his honour, and him who ordained him lose the power of ordaining and sitting in council.

(171). Concil. Ancyr. A.D. 314, Can. 13: It is not lawful for rural bishops to create presbyters or deacons in the country, but also not in the city without the bishop's permission. Concil. Hispal. II. A.D. 619, ap. Gratian I. Dist. LXVIII. c. 4.

such as the Bishop of Rome or Alexandria (172)—in this case his acts carry with them the acquiescence of his whole province, —or if the concurrence of his fellow-bishops has been already otherwise expressed (173). In any other case he cannot do so lawfully, because, although he may confer the necessary benediction for the office, yet without authority from others he cannot impart the stamp of doctrinal orthodoxy which will ensure recognition by other parts of the Church (174). Except in cases of extreme necessity (175) no bishop can therefore consecrate another without (1) the assistance or concurrence of at least two other bishops (176), nor (2) without the consent

(172). Concil. Nic. A.D. 325, Can. 6, preserves to the Archbishop of Alexandria his privileges, one of which was to consecrate all the bishops in his subject provinces. Ferrandi Breviarium, Can. 66 : Ut unus episcopus episcopum non ordinet excepta ecclesia Romana. Consecration by a single bishop was the rule in the British and Irish Church, Haddan & Stubbs I. 155. Baeda I. 27 relates that Gregory, writing to Augustin, Qu. 6 ap. Gratian I. Dist. LXXX. c. 6, permits him to have the privilege. According to Baeda III. 22, and Haddan & Stubbs III. 82, Honorius of Canterbury alone consecrated Ithamar Bishop of Rochester in 644 A.D. Baeda III. 20 relates that Ithamar alone consecrated Deusdedit Archbishop of Canterbury A.D. 655. Baeda IV. 2, however, relates that Theodore supplemented Chad's consecration, who had been consecrated by one British bishop only (Baeda III. 28). Even in 1831 the Archbishop of Avignon and the Bishop of Dijon were consecrated by one bishop. Craisson, § 1735. Duchêsne Origines, p. 348, 364.

(173). Concil. Antioch, A.D. 341, Can. 19 ap. Gratian I. Dist. LXV. c. 3, and Concil. Martin, *Ibid.* c. 2, state that this consent may be given by letter.

(174). Concil. Arelat, A.D. 314, Can. 20 ; Innocent, A.D. 404, *Ibid.* I. Dist. LXIV. c. 5 : Nor let one at haphazard ordain a bishop, lest the good gift should seem bestowed by stealth. Isidor. de Orig. Offic. II. 5, 11 : The reason why a bishop is not ordained by one, but by all the provincials, is because of heresy, lest tyrannical authority should accomplish aught against the faith. Concil. Nic. A.D. 325, Can. 6 ap. Gratian I. Dist. LXV. c. I. : If two or three out of contentiousness oppose the common vote of all, the same being reasonable in itself and in accordance with ecclesiastical rule, let the vote of the majority prevail.

(175). Gregory, A.D. 601, ap. Gratian I. Dist. LXXX. c. 6 ; Decret. Lib. I. Tit. XL. c. 6 and 7.

(176). Concil. Arelat. A.D. 314, Can. 20, in H. & S. I. 7, requires seven, or

of the metropolitan, as the representative of the centralised authority of the Church (177).

33. Wherever the Church has been territorially mapped out, the bishop who ordains must at the time have jurisdiction over the person to be ordained (178). This he may have in three ways: (1) by the candidate's being locally resident or domiciled

at least three. Concil. Nic., Can. 4 ap. Gratian I. Dist. LXIV. c. 5; Innocent, A.D. 404, *Ibid.* c. 5; Gelasius, A.D. 494, *Ibid.* c. 6; Apost. Can. 1: Let a bishop be ordained by two or three bishops; Apost. Const. III. 20; VIII. 27: Let a bishop be ordained by three or two bishops, but if any one be ordained by one let him be deprived. Concil. Araus. A.D. 441, Can. 21, l. c., c. 3: It is decreed that, when it chances two bishops only ordain, both the ordained bishops and his ordainers be condemned. Concil. Martin, A.D. 572, *Ibid.* c. 7; Egbert's Excerpt 96, A.D. 740. Ordination at that time involved confirmation. The Act 23 Hen. VIII. c. 20, sec. 2, names two bishops as necessary, but 25 Hen. VIII. c. 20, sec. 5, requires an archbishop and two bishops, or alternatively four bishops, both to confirm and to consecrate. Stephens' Eccl. Stat. 159. It is disputed whether the assistants are witnesses and approvers, or co-consecrators. Gregory, in his letter to Augustin ap. Baeda I. 27, calls them witnesses, and compares them to married couples attending a wedding as sympathisers, and this view is upheld by Haller de Sacris Ordinationibus, Part II. § V. c. II. Art. 2. On the other hand, Baeda III. 22, and an authority in Haddan & Stubbs II. 214, call them coadjutores. Martene de Ant. Rit. Lib. I. c. VIII. Art. X. § 16, expressing the Gallican view, says that beyond a shadow of a doubt they are co-operatores, and also Tournely; but in the Roman Church it is generally held otherwise.

(177). Concil. Nic. Can. 8 ap. Gratian I. Dist. LXIV. c. 8: If any one is made bishop against the ruling of the metropolitan, the great synod holds that such an one shall not be accounted a bishop. Concil. Antioch, A.D. 341, Can. 19, *Ibid.* I. Dist. LXV. c. 3: A bishop must not be ordained without the counsel and presence of the metropolitan. Concil. Carthag. II. A.D. 390, Can. 12, *Ibid.* c. 5: Without the privity of the metropolitan (primatis) of each province, let no one presume to ordain a bishop. Apost. Const. VIII. 4, directs "the principal of the bishops" to make inquiry before ordaining a bishop. Concil. Tarracon. A.D. 516, Can. 4, requires a bishop ordained in pursuance of letters granted by the metropolitan to appear before him within two months, that he may be fully instructed by him as to the observance of canonical precepts.

(178). Apost. Can. 56: A bishop must not venture to ordain out of his own bounds, for cities or countries that are not subject to him. Boniface VIII. in Sext. Lib. I. Tit. IX. c. 3; Devoti Lib. I. Tit. IV. § 12, 14.

within the district of his Church; (2) by the candidate's having been previously ordained by him to some lower degree; or (3) by the candidate's having been elected to some office, or, as it is said, having acquired a title in his Church or its dependencies. No bishop can ordain the subject of another without his permission (179) signified by letters dimissory (180), nor his own subjects

(179). Concil. Nic. A.D. 325, Can. 16: If any one dare surreptitiously to ordain in his own Church the subject of another without his bishop's consent, let the ordination be unratified (ἄκυρος ἔστω=irregular. Can. 4 says the ratification of every ordination rests with the metropolitan). Concil. Carthag. I, A.D. 348, Can. 5 ap. Gratian I. Dist. LXXI. c. 1; Concil. Chalcedon, A.D. 451, Can. 20; Innocent, A.D. 404, *Ibid.* c. 2: Let no one presume to ordain a clerk from a strange Church, unless the bishop of that Church gives permission. Concil. Elib. A.D. 305, Can. 24, *Ibid.* I. Dist. XCVIII. c. 4: All who have been baptized over seas, since their life is little known, ought not to be promoted to be clergy in other provinces. Concil. Milev. Can. 15 *Ibid.* I. Dist. LXXII. c. 3; Concil. Arvern. A.D. 535, Can. 11: Let no bishop dare to receive or promote to the presbyterate the clerk of another bishop against his will. Concil. Aurel. V. A.D. 549, Can. 5; Concil. London, A.D. 1126, Can. 10: Let no bishop ordain or pass sentence on the parishioner of another. Concil. Westminster A.D. 1138, Can. 7; Sext. Lib. I. Tit. IX. c. 2; Ayliffe 125, 402.

(180). The synod which condemned Paul of Samosata in 265 A.D., in Euseb. VII. 30, states in its circular letter: We have also communicated this to you that you may receive letters of communion from the bishop [appointed in his place]. Gratian I. Dist. LXXI. c. 7, and LXXII. c. 1: Letters testimonial were generally called *formatae*, *Ibid.* I. Dist. LXXI. c. 9, because they were drafted in the form agreed upon by the 318 bishops at Nicaea. Examples of such letters are given ap. Gratian I. Dist. LXXIII. They were of three kinds: (1) commendatoriae (συστατικοί), given to those labouring under suspicion who had cleared themselves; (2) communicatoriae, or pacificae (εἰρηνικοί), admitting to communion and the peace for those about to travel; and (3) dimissoriae. See *Eucharist*, note 266. Letters dimissory were given only to clergy, and were given to set them free from the Church to which they had been ordained, so that they could enter the service of some other Church without violating the canon. Concil. Chelsea, A.D. 787, Can. 6: Let a priest continue in that title to which he was blessed. Concil. Placent. A.D. 1095, ap. Gratian I. Dist. LXX. c. 2. After the establishment of the parochial system letters dimissory acquired an entirely new meaning, and were given to enable clergy to be ordained by another bishop than their own. Something of the kind is referred to by Innocent III. in Decret. Lib. I. Tit. XXIII. c. 8; but it is

within the Church of another, except to give the first tonsure, without special permission (181). Outside the province to which he belongs he cannot ordain at all unless invited so to do (182), nor can he ordain in his own Church if divested of jurisdiction by being suspended or deprived, by lapsing into heresy (183), or being superseded in visitation. Ordination in violation of this rule is termed invasion (184), and renders the offender liable to ecclesiastical censure (185); but if otherwise properly administered it is held in the West, at least since the fifth century, to be valid, but irregular (186). In the East ordination by heretics

explicitly allowed by Boniface VIII. in Sext. Lib. I. Tit. IX. c. 3. By Const. 1 Reynolds, A.D. 1322, a bishop's vicar-general cannot grant letters dimissory if the bishop is within the province.

(181). Apost. Can. 36; Concil. Turon. A.D. 460, Can. 9; Concil. Aurel. III. A.D. 538, Can. 15, ap. Gratian Caus. VII. Qu. I. c. 28, and Caus. XVI. Qu. V. c. 1 and 3. Socrates II. 24 relates that Athanasius, having been restored to his see of Alexandria, in 349 A.D., by a Council at Jerusalem, passing through Pelusium, performed ordination in some of the churches there, whereupon he was charged with having ordained in the diocese of another.

(182). Concil. Const. A.D. 381, Can 2.

(183). Innocent, A.D. 404, ap. Gratian Caus. I. Qu. I. c. 17: Those who have lost the perfection of the Spirit which they had received [by lapsing into heresy], cannot bestow the plenitude thereof which chiefly takes place in ordinations. *Ibid.* c. 29; Leo *Ibid.* c. 112.

(184). Concil. Carthag. III. A.D. 397, Can. 20: That another's flock be not invaded by any bishop, and that no bishop supersede his colleague in his administrative district (dioecesis). Concil. Chelsea, A.D. 816, Can. 11: That it be unlawful for any bishop to invade the parish of another, or to draw any ministration to himself which belongs to another in the consecration of Churches, or of presbyters or deacons, excepting only the archbishop.

(185). Concil. Aurel. III. A.D. 538, Can. 15: A bishop ought not to invade other dioceses for the purpose of ordaining clergy or hallowing altars. Should he do so, let those whom he has ordained be removed, but the consecration of the altars remain, and himself, as a transgressor of the canons, be suspended from celebrating masses for a year.

(186). Leo Epist. CLXVII. ad Rusticum c. 1: No reason allows those to be counted among bishops who have not been elected by their clergy, &c. But if any clergy have been ordained by such false bishops . . . such ordinations may be allowed. Pseudo-Isidor. Caus. I. Qu. I. c. 40 calls such

is not held to be valid so as to confer the position of order in the Church; but, since it may be ratified and allowed in approved cases (187), it seems difficult to deny that it is held to be so far valid as to convey a gift from above.

34. To bestow orders in a regular manner they must be given (1) after examination and probation, (2) after fasting and prayer, and (3) unconditionally and gratuitously. A bishop is forbidden to lay hands suddenly on any one (188), by which is understood that he may neither ordain without previous examination as to knowledge (189), nor without previous proba-

strange bishops (pseudo-Episcopi), but allows their ordinations to be valid. Concil. Westminster A.D. 1138, Can. 7: We inhibit clerks that, without letters from their proper bishop, have been ordained by one that was not their bishop from exercise of their office; Concil. London A.D. 1175, Can. 5: Because clerks procure themselves to be ordained by foreign bishops we annul their order. Const. 37 Edmund, 1236.

(187). Apost. Can. 68: Those that are either baptized or ordained [by heretics] can be neither Christians nor clergymen. Syn. VII. A.D. 787, ap. Gratian Caus. I. Qu. VII. c. 3. Morinus de Sacr. Ord. Pars III. Exer. v. 11, 4: It is hence gathered that the Eastern Church has at various times admitted heretics in different ways. At the beginning of a heresy, to make return easier, it has admitted the ordinations of certain heretics; at other times it has declared them void and repeated them.

(188). 1 Tim. v. 22. Concil. Nic. A.D. 325, Can. 2: Because many things have been done contrary to Church rule, so that men lately come to the faith from a heathen life after being for a short time catechumens, are presently admitted to the spiritual washing, and simultaneously preferred to the episcopate or presbyterate, it is decreed that nothing of the sort be done for the future. Leo, A.D. 446, ap. Gratian I. Dist. LXXVIII. c. 3: What is laying on hands suddenly but bestowing the honour of the priesthood on such as have not been proved, before the age of maturity, before proper examination, before meriting obedience, before experiencing discipline. Lacy's Pontifical, p. 76: We forbid under pain of anathema that no one present himself for ordination without previous examination.

(189). Pseudo-Zephyrinus ap. Gratian I. Dist. LXXV. c. 3: Hold ordinations of priests and deacons at fitting times solemnly in the presence of many, and advance to this work men learned and wise. Concil. Carthag. III. A.D. 397, Can. 22, ap. Gratian I. Dist. XXIV. c. 2: Let no one be ordained to the clergy unless he be approved of by the bishop's examination or the testimony of the people. Concil. Clovesho, A.D. 747, Can. 6: That bishops ordain no clerk to the degree of a presbyter till they first

tion as to character (190). The examination as to knowledge is directed to test both the candidate's general knowledge (191), and also his knowledge of the Christian faith and its requirements (192). It was formerly ordered to commence on the Wednesday previous to the ordination, and to last three continuous days (193).

make open inquiry into his former life, and into his present probity of manners and knowledge of the faith. Decret. Lib. I. Tit. XXIX.; Lacy's Pontifical, A.D. 1450, p. 76; Ayliffe 402.

(190). Concil. Nic. A.D. 325, Can. 9 ap. Gratian I. Dist. LXXXI. c. 4; Gelasius, *Ibid.* I. Dist. XXIV. c. 3: If there is nothing in his life or morals against canonical rules do you ordain him presbyter. Gregory, *Ibid.* Caus. I. Qu. I. c. 119: Do ye therefore be specially careful in ordination, and by no means admit to holy orders those who are not advanced in years and clean in works. First investigate the life and manners of those who are to be placed in any holy order, and let neither force nor entreaty influence you. Concil. Clovesho. A.D. 747, Can. 6; Concil. Nannet. A.D. 895, *Ibid.* I. Dist. XXIV. c. 5; Const. 1 Reynolds, A.D. 1322; Const. 6 Mepham, A.D. 1330; Lynd. 33.

(191). Gratian I. Dist. XXXVII. c. 9–14; Concil. Tolet. VIII. A.D. 653, Can. 8: Let no one be admitted to any degree who does not know the whole psalter, the usual canticles and hymns, and the complete mode of baptizing. Elfric. Can. 23, A.D. 957: The teacher is blind that hath no book-learning. See § 48.

(192). Gratian I. Dist. XXXVII. c. 5, and Dist. XXXVIII.; Gregory, *Ibid.* Caus. I. Qu. I. c. 119; Concil. Clovesho, A.D. 747, Can. 10; Decret. Lib. I. Tit. XII.; Ayliffe 402.

(193). Concil. Nannet. A.D. 895, ap. Gratian I. Dist. XXIV. c. 5: When a bishop purposes to hold an ordination let all the candidates assemble on the previous Wednesday, together with the leading presbyters. Let the bishop select from his family (a latere suo) presbyters and other prudent men, conversant with the Divine law and practised in canonical rules, and charge them diligently to inquire into the life, condition, birthplace, age, training, and place of education of the candidates, and if they are fairly literate and instructed in the law of the Lord. Let those who have this charge beware that they do not deviate from truth out of favour or hope of reward, so as to recommend the unworthy or unfit to receive the sacred degrees at the hands of the bishop. . . . Let them be therefore carefully examined for three continuous days, and then on the Saturday on which they shall have been found meet let them be presented to the bishop. A MS. quoted in Lingard's Anglo-Saxon Church II. 19, directs candidates to repair to the bishop's residence a month before the day of ordination, for examination.

and the candidate is also required to be provided with the necessary books for his calling (194).

35. The probation which should precede is of longer duration (195). It consists in advancing the candidate, not all at once but by steps, through the lower up to the higher degrees of the presbyterate (196). Hence a neophyte may not be ordained

(194). Baeda ap. Gratian I. Dist. XXXVIII. c. 5 [attributed there to Augustin]: The things which priests must necessarily have by them for learning are the sacramentary, the lesson book, the hour book, the baptismal book, the calendar, the penitential rule, the psalter, the homilies suited for Sundays and festivals throughout the year. If any one of these is wanting, the priest's name will hardly pass muster, because the Gospel woes are to be feared which say: If the blind lead the blind, both shall fall into the ditch. Elfric's Can. 9, A.D. 957: The priest shall have the furniture for his ghostly work before he is ordained, *i.e.*, the holy books. . . . It is necessary that the mass-priest have these books.

(195). Concil. Arelat. IV. A.D. 524, Can. 2 forbids any one to be admitted to the diaconate nisi post annuam conversionem. Concil. Aurel. III. A.D. 538, Can. 6; Concil. Aurel. V. A.D. 549, Can. 9; Concil. Brac. I. A.D. 563, Can. 20, requires the year to be spent in minor orders.

(196). Cyprian Ep. 57, 8, A.D. 252, declares Cornelius a valid bishop because he was promoted through all the ecclesiastical offices, and ascended by all the steps of religious service to the summit of the priesthood. Siricius, A.D. 385, ap. Gratian I. Dist. LXXVII. c. 3; Zosimus, A.D. 418, *Ibid.* I. Dist. LIX. c. 2: If high offices of state are not committed to those who have only entered the porch, but to those who, by examination in lower degrees, have obtained the foremost rank, who will be so arrogant or impudent as to aspire to be a leader in the heavenly warfare without having been first a follower, and a teacher before he has been a learner? Let him acquire the elements of the Divine service in the Lord's camp, in the rank of the readers, and not think it beneath him to become exorcist, collet, subdeacon, and deacon, successively. And let him come to the apex of the presbyterate when his age corresponds with the name of presbyter, and his previous services attest the merit of his uprightness. Coelestin. A.D. 428, *Ibid.* c. 4: He who has not risen by each branch of service cannot attain to the order of the presbyterate. Gregory, A.D. 599, *Ibid.* c. 3: Because it often happens that on a bishop's death some layman takes the tonsure, and is straightway promoted to the priesthood, . . . it is therefore necessary that, however great an individual's merits may be, he should be trained to ecclesiastical duties by passing through the several distinct orders. See *Ibid.* I. Dist. LXI. c. 7; Concil. Sardic. A.D. 343, *Ibid.* c. 10; Leo, A.D. 446, *Ibid.* c. 5; Concil. Brac. A.D. 563, Can.

to any holy order (197). The omission of any degree is forbidden as a neglect of probation (198), and also the bestowal of several degrees at once without a proper interval between them. The former is called ordination at a bound or *per saltum* (199), the latter the inculcation of orders (200) or ordination *omissis interstitiis* (201). Exceptions are occasionally allowed for some urgent cause, and according to the Roman use it was customary to advance a subdeacon to the diaconate and presbyterate on the same day (202), lest having become a deacon he should afterwards refuse to be advanced to the presbyterate. The bishop who confers one degree ought to confer the rest (203); nevertheless, in case of illness, death, or other sufficient cause,

20: That no layman be advanced to the priesthood except "per singulos gradus eruditus." Const. 5 Peckham, A.D. 1281; Decret. Lib. V. Tit. XXIX.; Egbert's Pontifical shows the probation through which Christ passed.

(197). Concil. Nic. A.D. 325, Can. 2; Gregory ap. Gratian I. Dist. LIX. 3 and LXI. 1: Concil. Martini, A.D. 572, Can. 22.

(198). Pseudo-Isidor. ap. Gratian I. Dist. LXXVII. c. 1. Alexander II. A.D. 1065, *Ibid.* I. Dist. LII. c. 1, required a presbyter to be ordained subdeacon who had been ordained presbyter without being ordained subdeacon praepostero cursu. Concil. Sardic. A.D. 347, Can. 10 (Greek) calls it προκοπή. Concil. Barcin. II. A.D. 599, Can. 3 forbids ordination per saltum, but calls the decree an innovation. Also Syn. VIII. A.D. 869, Can. 5.

(199). Const. 5 Thorsby, A.D. 1363.

(200). Innocent III. in Decret. Lib. I. Tit. XI. c. 13 and 15, directs a bishop to be suspended who confers two orders on the same person on the same day, or yet on two following days continuing the fast; the reason assigned (Lib. III. Tit. XLI. c. 3) being that he cannot say two masses the same day. Const. 5 Peckham, A.D. 1281: Let no man have orders inculcated in him, because the inculcation lessens the reverence, and by consequence the grace, which bounds back from graceless men. It is, therefore, contrary to the dignity of the most reverend sacrament to confer five orders to one man at once, *i.e.*, four unsacred, one sacred. Lynd. 309; Can. 32 of 1603; Ayliffe 402.

(201). Const. 5 Islep, A.D. 1362.

(202). Morinus de Sacr. Ord. Pars 3, Exer. 2, c. 2 and 3; Gelasius ap. Gratian I. Dist. LXXIV. c. 9 permits subdeacons and collets to be made presbyters if deacons refuse promotion. Duchêsne, p. 340.

(203). Gratian I. Dist. XXIII. c. 15.

the ordination commenced by one bishop may be completed by another.

36. Minor orders may, by Roman rule, be conferred on any day, hour, and place, but, by English rule, only in the morning, before dinner (204); and since fasting and prayer are necessary for obtaining any gift of the Spirit, not only should the benediction of any order which is sacramental be given by fasting consecrators to fasting recipients, but it should also be given at times when the whole people have engaged in prayer and fasting on their behalf (205). In places such as Spain (206) and Gaul (207), where a three days' fast was formerly observed every month except July and August, or at Rome, where, before the fifth century, a three days' fast was observed every week (208), ordination to holy orders took place at any fasting time, but in Rome chiefly in the month of December (209). Since the fifth century, when the three days' fast has, in the West, only been kept four times a year, the ordination of presbyters and deacons has been confined to these four seasons, now called Ember-seasons (210), and to the mid-week and final week in the Lenten fast-tide (211). A rule to this effect was

(204). Maskell Mon. Rit. II. 155 (ed. 1882).

(205). Acts XIII. 3; Leo ap. Gratian I. Dist. LXXV. c. 4; Const. 1 Reynolds, A.D. 1322.

(206). Concil. Elib. A.D. 305, Can. 23; Concil. Tolet. XVII. A.D. 694, Can. 6; Isidor. de Offic. I. 42, says that these three days' fasts are observed, following the example of the Ninevites.

(207). Theodori Poenit. I. VI. 5, in H. & S. III. 183: Theodore approved of twelve three days' fasts counting as a year.

(208). Viz., one day on Wednesday, and a superpositio or forty hours' fast on Friday. Innocent, A.D. 416, ap. Gratian III. Dist. III. c. 13: There can be no doubt that it was because the Apostles so fasted on the two days before the Lord's resurrection that ecclesiastical tradition forbids the celebration of the sacraments on them; which custom must be observed every week, because the commemoration of that day is celebrated every week.

(209). Amalarius de Off. Lib. II. c. 1, says that Simplicius was the first to hold ordinations in February. Duchêsne, p. 340, says the Liber Pontificalis always mentions ordinations in December. See Maskell Mon. Rit. II. CXXXV.

(210). Duchêsne 355.

(211). Duchêsne, p. 233.

adopted in this country in the eighth century ([212]), and has since then become universal in the West.

37. The dignity of the episcopate may by early rule be conferred only on Sunday ([213]), but later Roman custom allows it to be conferred also on a saint's day ([214]). According to Gallican rule a bishop should be consecrated in the Church of the city over which he is called to preside ([215]), but the Roman rule, adopted in this country, requires the consecration to take place in the metropolitan's Church and not elsewhere, except with the consent of the metropolitan chapter ([216]). Degrees below the subdiaconate may be conferred upon one or two at a time, on any Sunday or festival ([217]), and in other places than a church ([218]). No one can, however, be ordained subdeacon, deacon or pres-

(212). Concil. Clovesho, A.D. 747, Can. 18; Pupilla Oculi, A.D. 1378, Lib. VII. c. 3.

(213). Leo, A.D. 445, ap. Gratian I. Dist. LXXV. c. 5: That ordinations of priests [*i.e.*, bishops] are held on the Lord's day we know to be not merely matter of custom but of apostolic teaching. Concil. Tolet. IV. A.D. 633, Can. 18, says on Sunday. Concil. Caesaraugust. III. A.D. 691, Can. 1; Egbert's Excerpt 96, A.D. 740: Ordinations of bishops ought to be on the Lord's day, not in the country or small towns, but in the chief cities.

(214). See Maskell Mon. Rit. II. 258.

(215). Concil. Aurel. IV. A.D. 541, Can. 5; Duchêsne 358 states that the metropolitans of Milan and Aquileia consecrated each other, and that their suffragans, like those of Rome, were consecrated in the metropolitan Church. Concil. Tolet. IV. A.D. 633, leaves the choice of place to the metropolitan. Ennodius Vita Epiphan. p. 341.

(216). The Chapter of Canterbury protested when Anselm, in 1108, consecrated Belmeis Bishop of London at Pagham, away from the metropolitan Church, without their license. See Hook's Lives II. 265. When Edmund,, in 1258, consecrated a Bishop of St. Asaph at Boxgrove (*Ibid.* III. 216) he gave a certificate to the Chapter, in order not to prejudice the rights of their Church, H. & S. I. 465. When, in 1255, Boniface consecrated a Bishop of Ely at Belley without a license from the Chapter, the whole province protested. Hook's Lives III. 278; Gibson 111; Maskell Mon. Rit. II. CXXXIV.

(217). Innocent III. in Decret. Lib. I. Tit. XI. c. 3: It is allowed to bishops to promote one or two to minor orders on the Lord's day and other festivals.

(218). Concil. Laodic. A.D. 363, Can. 15 ap. Gratian I. Dist. LXIX. c. 2, speaks of exorcists ordained either in Church or in their own houses.

byter at any other time than on one of the four Embertide Saturdays (219), the vigil of Passion Sunday, formerly known as the mid-week in Lent (220), or Easter Eve (221), without becoming irregular. At these times, nevertheless, the ordination may take place either on the eve-day after sunset or early on Sunday morning (222). Ordination is forbidden in the presence of hearers (223), and should always take place at a Eucharistic celebration (224). Early Roman custom placed it in the forefront of the mass of the faithful, *i.e.*, before the Gospel-readings with which that service commenced, and the Bishop of Rome is still

(219). Gratian I. Dist. LXXVI.; Gelasius *Ibid.* LXXV. c. 7; Concil. Winton. A.D. 1071, Can. 4: That ordinations be performed at proper seasons. Alexander III. to Bishops of Bath and Hereford in Decret. Lib. I. Tit. XI. c. 1 and 2, and Urban III. *Ibid.* c. 8, forbid the exercise of order conferred at any other time. Const. 1 Reynolds, A.D. 1322; Devoti Inst. Lib. I. Tit. IV. § 6; Egbert's Excerpt 97, A.D. 740: Let the ordinations of priests and deacons be on the Sabbaths of the four seasons. Duchêsne 342.

(220). Gelasius, A.D. 494, ap. Gratian I. Dist. LXXV. c. 7: Ordinations of priests and deacons should not be held except at fixed seasons, *i.e.*, in the fasts of the fourth, seventh, and tenth months, likewise at the beginning of Lent, in the mid-week of Lent (mediana hebdomas, referring to the time when at Rome Lent was observed for three weeks only, Socrat. v. 22), and on the fast of Easter Eve (sabbati jejunio) about sunset. Alexander III. in Decret. Lib. I. Tit. XI. c. 3: It is not lawful for any bishop except the Roman pontiff to ordain to the subdiaconate [and other holy orders], except on the four Embertides, or on holy Sabbath, or the sabbath before Passion Sunday.

(221). Gelasius l. c. Leo, A.D. 445, *Ibid.* c. 4.

(222). Leo, ap. Gratian I. Dist. LXXV. c. 4: The ordination of a priest or Levite (*i.e.*, deacon) should not be celebrated at any or all times, but the beginning of the night (exordia noctis) should be chosen which after Saturday [after 6 P.M., when the day ended] dawns upon the first day of the week (lucescit in prima sabbati), and in it (quibus referring to exordia noctis) fasting consecrators should bestow the holy blessing upon fasting receivers. It will be a like observance of this rule if the ordination is celebrated early on the Sunday morning itself (mane ipso dominico die) before breaking Saturday's fast, there being no difference between this time and the beginning of the night preceding, since without doubt the night preceding is part of Sunday. Rabanus, A.D. 834, de Cler. Inst. II. c. 24.

(223). Concil. Laodic. A.D. 363, Can. 5.

(224). Theodori Poenit. II. III. 1, 2, in H. & S. III. 192; Innocent III. in Decret. Lib. I. Tit. VI. c. 28.

consecrated at the very beginning of the service, before the angelic hymn (225). All other ordinations, however, now take place in the West before the Gospel, although the Gospel has long ceased to be the beginning of the service.

38. Ordination must be given unconditionally and gratuitously. To ordain for money, or to give money or any consideration to procure orders (226), constitutes the grave sin of simony (227). A bishop ordaining any one against his will (228), or ordaining the subject of another (229), is directed to be suspended for a year from offering the oblation; a bishop ordaining contrary to the canons one who is disqualified (230), or inculcating orders (231), to be deprived of the right of

(225). Innocent III. A.D. 1202, l. c.

(226). Concil. Barcin. II. A.D. 599, Can. 1; Elfric's Can. 27, A.D. 957; Concil. London A.D. 1126, Can. 3: That at the consecration of bishops blessing of abbots, dedication of churches, a cope, a carpet, a towel, a basin be not demanded by force, nor taken unless freely offered. Concil. Westminster A.D. 1138, Can. 3, repeats the same. Innocent III. to Archbishop of Canterbury in Decret. Lib. V. Tit. III. c. 36.

(227). Concil. Aurel. II. A.D. 533, Can. 3 and 4; Gregory ap. Gratian. Caus. I. Qu. l. c. 117; Concil. Winton. A.D. 1070, Can. 2, and A.D. 1071, Can. 2: That no one be ordained by means of simoniacal heresy. Concil. London A.D. 1126, Can. 1: Following the ancient fathers, we forbid, by apostolical authority, any man to be ordained for money. Concil. Westminster A.D. 1127, Can. 2: We wholly forbid any man to be ordained or preferred by means of money.

(228). Concil. Aurel. III. Can. 7, A.D. 538, ap. Gratian I. Dist. LXXIV. c. 1; Ayliffe 402.

(229). Concil. Aurel. III. Can. 15, A.D. 538, *Ibid.* Caus. VII. Qu. l. c. 28; Concil. Lugdun. II. A.D. 1274; Sext. Lib. I. Tit. IX. c. 2.

(230). Concil. Nic. A.D. 325, Can. 3: The bishop that does otherwise [than ordain after probation] shall do it at the peril of his order. Stat. Eccl. Ant. A.D. 505, Can. 68, ap. Gratian I. Dist. l. c. 55: If a bishop has knowingly ordained a penitent, let him be deprived of his episcopate, *i.e.*, of the power of ordaining. Let a bishop have the like sentence who knowingly ordains one who has married a widow or divorced woman. Leo, A.D. 446, *Ibid.* Caus. I. Qu. l. c. 43: If any bishop have ordained any presbyters contrary to the canons, even should they escape the loss of their own dignity, they shall in future have no right of ordaining. Concil. Arelat. III. Can. 3, *Ibid.* I. Dist. LV. c. 2; Concil. Aurel. III. A.D. 538. Can. 6.

231). Innocent III. in Decret. Lib. I. Tit. XI. c. 15.

ordaining in future; and a bishop simoniacally conferring orders to be deposed (232). To prevent future cavil, ordination ought always to be attested by letters of orders (233).

39. The effect of ordination, when validly and regularly bestowed, is threefold—(1) An increase of sanctifying grace is received by the person ordained, according to his merits (234), whereby he becomes personally more holy than he was before. (2) He receives sacramental grace, aiding him in the discharge of the duties belonging to his new position. (3) By the communication of a Divine capacity, an indelible character is impressed on him (235). When ordination has been validly but irregularly given, as when it is given to one who is not a fit subject to receive it (236), the character is held to be imparted, but not the execution of the order. In such a case the recipient is said to be irregular, and is excluded from any exercise of his order until he has obtained from the Church an acknowledgment of his position in order (237).

(232). Concil. Chalcedon, A.D. 451, Can. 2, ap. Gratian, Caus. I. Qu. 1. c. 8: If any bishop shall ordain for money, . . . let him who is convicted forfeit his own degree, and let him who is ordained benefit nothing by the ordination. Egbert's Excerpt 43, A.D. 740.

(233). Codex Eccles. Afr. 89, requires letters of orders to be given to bishops to prevent all disputes as to seniority.

(234). Origen de Prin. I. 3, 7: There is another grace of the Holy Spirit which is bestowed upon the deserving through the ministry of Christ, in proportion to the merits of those who are rendered capable of receiving it. Concil. Neocaesar. A.D. 314, mentions the current opinion that the imposition of hands in ordination absolves from all sins except carnal ones.

(235). Thomas Aquinas Suppl. Qu. 34 Art. 2, defines character as "an indelible spiritual mark impressed on the soul by means of a sacramental sign (per sacramentum), carrying with it the capacity (habens rationem) of a spiritual power, which power consists in participating in the power, the dignity, and the priesthood of Christ." Concil. Hispal. II. A.D. 619, ap. Gratian I. Dist. XXIII. c. 13, calls it titulum consecrationis. See *The Sacraments*, § 21.

(236). Innocent III. in Decret. Lib. I. Tit. IX. c. 10; Lynd. 27.

(237). Gelasius ap. Gratian, Caus. I. Qu. VII. c. 12: Should any, through their own recklessness, or the carelessness of the presidents, have been admitted [whilst thus disqualified], let them remain in the position in

40. When order has once been received, the character is so indelibly impressed that it can neither be lost (238) nor renounced (239). Hence no order can be reconferred without sacrilege (240). Should, however, a doubt arise as to whether the character has been received, or as it is commonly expressed, whether a person has been validly ordained or not, the rule of the West since the eighth century requires it to be conditionally reconferred (241). Should it be known to

which they are without any further advancement. Gregory, *Ibid.* Caus. IX. Qu. 1. c. 1: We can in no way call that [canonical] ordination which is given by those excommunicate. *Ibid.* c. 6 refuses to acknowledge a presbyter ordained by non-Catholics. *Id. Ibid.* I. Dist. LXVIII. c. 1: Should any one attain the priesthood with some little fault, let penance be enjoined on him for the fault. Decret. Lib. I. Tit. XI. c. 16; Const. 1 and 37 Edmund, A.D. 1236: We suspend those from the exercise of their order who were not born in lawful matrimony, and were ordained without a sufficient dispensation, as also those who were ordained by such as were not their proper bishops without the license of their proper bishops, till they have obtained dispensation. Lynd. 30; Ayl. 402.

(238). Rom. XI. 29; Augustin de Bono Conjug. 24: If one is ordained into the clergy, to gather a people together, even though the gathering of the people does not follow, yet in those thus ordained the sacrament of order remains, and if any one, for any fault, is removed from his office, he will not be without the Lord's sacrament, once given, although it remains for judgment. Thomas Aquin. II. 2, Qu. 39, Art. 3: The sacramental power remains in its essence in the man who has received it by consecration as long as he lives, whether he falls into heresy or schism. Craisson, § 251.

(239). Alexander III. in Decret. Lib. I. Tit. XIII. c. 1, however, says a bishop can renounce his dignity as well as his place, because his is a dignity.

(240). Concil. Nic. Can. 8 ap. Gratian Caus. I. Qu. VII. c. 8, directs those ordained by Novatians to keep their rank. Leo *Ibid.* c. 19 and 20; Gregory *Ibid.* I. Dist. LXVIII. c. 1: As he who has been once baptized ought not to be again baptized, so he who has been hallowed once ought not to be again hallowed in the same order. Augustin *Ibid.* Caus. I. Qu. 1. c. 97: Each is a sacrament, and each is bestowed by a kind of hallowing, the one at baptism, the other at ordination, and therefore in the Catholic Church neither may be repeated. Innocent III. in Decret. Lib. I. Tit. XVI.

(241). Gregory III. ad Boniface ap. Gratian I. Dist. LXVIII. c. 2: As to the priests you have found there, if those who ordained them are unknown, and it is doubtful whether they were bishops or not, if such

have been invalidly received — which was the view taken in the East and in Spain of the orders of certain heretics (242) — it should be repeated, or, as the Easterns express it, ratified by the imposition of hands (243). On the other hand, to pretend to renounce order is to disown the Spirit's work, which is apostasy (244). One who is guilty of this offence is directed to be excommunicated, and for ever after forbidden the exercise of order (245).

### The Subjects of Order. Qualifications.

41. Although in the first ages of the Church the qualifications for order were in many respects the same as the qualifications for baptism, and laymen no less than presbyters and deacons had a distinct part to perform in the priestly functions

priests are men of good conduct and Catholics, and learned in the ministry of Christ and His holy law, let them receive the benediction of the presbyterate from their bishop and be hallowed, and so discharge their holy function. Baeda IV. 2 relates that Theodore completed the ordination of Bishop Chad in 680, who had been consecrated by one bishop and two British bishops whose orders were doubtful (Baeda III. 28), after the Catholic manner. Concil. Chelsea A.D. 816, Can. 5 : That none of Scotch extraction be allowed to usurp to himself the sacred ministry, . . . because we are not certain how or by whom they were ordained. Innocent III. in Decret. Lib. III. Tit. XLIII. c. 3, A.D. 1206 : Non intelligitur iteratum quod ambigitur esse factum.

(242). Concil. Caesaraugust. II. A.D. 592, Can. 1, directs converts from Arianism to receive again the blessing of the presbyterate.

(243). Acts XII. ; Concil. Nic. A.D. 325, Can. 8, uses the expression χειροθετούμενοι of Novatians.

(244). Alexander III. in Decret. Lib. V. Tit. IX. c. 1 ; Ayliffe 85 ; nevertheless 33 and 34 Vict. c. 91 legalises such apostasy here.

(245). Theodori Poenit. I. VIII. 12, 13, in H. & S. III. 182 : If any one should renounce the world, and afterwards return to the secular habit, . . . unless he were a monk when he left the Church let him do penance seven years. Egbert's Excerpt 60, A.D. 740: If a clerk contemptuously refuse to return let him be anathema. Concil. Westminster A.D. 1102, Can. 11 : That clerks who have forsaken their order do either return or be excommunicate. Concil. Aurel. I, A.D. 511, ap. Gratian Caus. XXVII. Qu. 1, c. 32.

of worship (246), yet, when the general standard of conduct had become lowered by the removal of the stimulus of persecution and the universal practice of infant baptism, it was felt imperative that those at least who discharged the higher functions of the priesthood and were commissioned to rule others should not fall below the standard of early days. The clerical order was in consequence differentiated more sharply than before from the order of laymen. When at a later period, upon the decline of solemn worship, the vicarious discharge, not only of the laymen's but also of the deacon's duties, devolved upon presbyters in addition to their own, none it was deemed could have a Divine call (247) to so exalted a position at once of government and representation unless he had first proved his capacity for self-government, and together with innocence of life possessed adequate learning (248).

42. The primary requisite for order is universally allowed to be the Divine call (249), by which is understood the act of God's

(246). Clement, 1 Cor. c. 4: Let each one take part in the Eucharist in his own order.

(247). Cyprian Ep. 54 (Oxf. 59), 5, who states that election is not enough. De Unit. Eccl. c. 10.

(248). Cyprian Ep. 67, 1 and 2; Concil. Elib. A.D. 305, Can. 24: Foreigners may not be ordained, because their manner of life is unknown. Concil. Nic. A.D. 325, Can. 9: The Catholic Church admits only that which is blameless. Gelasius ap. Gratian Can. I. Qu. l. c. 91: Our most holy religion, which includes the celebration of Catholic observances (disciplinam), claims for itself such respect that no one may come to it without a pure conscience. Concil. Tolet. VIII. A.D. 653, Can. 8: It is absurd that those whose business is to teach others, and to set them an example of life and conduct, should be advanced to any degree in order without a knowledge of the law of God and a moderate acquaintance with letters. . . . Such an one only may be advanced who is illustrious for innocence of life and distinction of learning. Concil. Westminster A.D. 1126, Can. 8.

(249). Acts I. 24: Show whether of these two men Thou hast chosen. It is called *ἀνάῤῥησις ἱερά* in Dionysius ap. Morin. p. 57. Lucifer de S. Athanas. I. 9: He only can be filled with the virtue of the Holy Ghost for the governing of His people whom God has chosen, and on whom hands have been laid by the Catholic bishops. Hieronym. ap. Gratian Caus. VIII. Qu. l. c. 16: Let the government of the people be intrusted

providence by which He chooses some and prepares them by suitable mental endowments for performing sacred functions, and inspires them with a desire to embrace the ecclesiastical state to His honour and their own sanctification. The nature and tests of this call belong to the department of moral theology. In itself the call is internal, yet it requires external recognition by the Church (250); and because its existence is invariably necessary, order may never be forced on an unwilling subject (251). On the other hand, one who has taken any degree in order and then refuses to go forward may be deprived of the position he already holds (252), because such refusal is evidence of defection after putting his hand to the plough.

to him whom God shall select, viz., one who has in himself the Spirit of God, and before whose face are the commandments of God.

(250). Innocent III. in Decret. Lib. v. Tit. VII. c. 12: According to the Apostle, How shall they preach unless they be sent? and the Truth Himself said to His Apostles, Pray ye the Lord of the harvest that He would send forth labourers into His harvest. But if any one cleverly replies that such persons [as the heretics] are invisibly sent by God, albeit they are not visibly sent by man, and that the invisible mission is far higher than the visible, and the Divine better than the human, . . . it may be reasonably replied that, inasmuch as the inner mission is hidden, it is not enough for any one to assert that he is sent by God (which any heretic may say), but he must give proof of his invisible mission.

(251). Concil. Aurel. III. A.D. 538, Can. 7 ap. Gratian I. Dist. LXXIV. c. 1: Let a bishop who ordains one against his will (invitum aut reclamantem) be suspended for a year from offering the oblation. Gregory, A.D. 591, *Ibid.* c. 2; Const. 1 Reynolds, A.D. 1322; Lynd. 309, followed by Benedict XIV., state that such an ordination is absolutely void. Hutton, p. 485.

(252). Concil. Carthag. V. A.D. 401, ap. Gratian I. Dist. LXXIV. c. 3: If any clergy refuse to be advanced by their bishops, let them not remain in the degree from which they have refused to move. The tonsure given in infancy may alone be renounced. Gratian Caus. XX. Qu. II. c. 1; Concil. Westminster A.D. 1127, Can. 4: If any in the inferior orders refuse at the bishop's admonition to be ordained, let him be deprived of the dignity assigned him. Alexander III. to the Archbishop of Canterbury and his suffragans in Decret. Lib. I. Tit. XIV. c. 6: Since the sacred canons seem to disagree [as to the promotion of unwilling clergy], some saying that such ought not to be compelled to proceed, others asserting the contrary, we undo the knot of contradiction by this present writing, decreeing that

43. The outward qualifications which are held to be ordinarily necessary to show the existence of a Divine call (253) include (1) being a man and not a woman; (2) having received already the sacrament of baptism in its entirety (254); (3) being free from any physical defect which would incapacitate for the exercise of order; (4) holding the right faith and being of approved life; (5) having adequate learning (255); and (6) having a proper title. But since there are cases in which there is unmistakably a Divine call although one or more of these outward qualifications are absent, the Church reserves to herself in most cases a dispensing power, subject nevertheless to many safeguards.

44. Two classes of persons are without the elementary qualification for receiving order, viz., women and unbaptized persons. The ordination of a woman is a mere nullity, women being for-

if the aforesaid clergy declare themselves unworthy to receive higher orders because of secret sins, inferiors shall be promoted over their heads; and unless those who so refuse to be ordained are very useful in other ways to their Churches, they shall be deprived of their benefices, which shall be canonically bestowed on others. Const. 10 Otho, A.D. 1237: If vicars themselves are the occasion of their not being ordained, we decree that they be deprived of their benefices. Syn. Patricii, Can 10, in Haddan and Stubbs II. 329: If any one shows the beginning of a good work by becoming a singer, and then intermits it discarding the tonsure, let him be excluded from the Church, unless he returns to his former position.

(253). Innocent III. A.D. 1199, in Decret. Lib. v. Tit. VII. c. 12.

(254). Including confirmation. Concil. Nic. A.D. 325, Can. 8, requires Novatians who join the Catholic Church to remain in their degree after receiving the laying on of hands (χειροθετουμένους), because Novatians denied the grace of laying on of hands. Maskell. Mon. Rit. II. 156.

(255). Concil. Lat. III. A.D. 1179, Can. 2, in Decret. Lib. I. Tit. VI. c. 9, mentions as positive requisites (1) age, (2) morals, and (3) learning. Similar requirements are made by Alexander III. *Ibid.* Tit. XIV. c. 6, and for promotion to the episcopate by Innocent III. *Ibid.* c. 22. Const. 6 Otho, A.D. 1237: Since it is very dangerous to ordain idiots, illegitimates, irregulars, illiterates, strangers, and any that want a certain title, we enact that a diligent inquiry be made by the bishop before ordination concerning these particulars. Lynd. 138, 139; Whitgift's Martyrology XXXI.: The ecclesiastical doctor ought to be distinguished both for learning and life. Learning without life makes a man arrogant; life without learning makes him useless.

bidden even to come near the altar at service time (256). The ordination of an unbaptized person may render his acts means of grace to those who receive them in faith (257), ignorant of his incapacity, but it leaves himself devoid of the sacramental

(256). 1 Cor. XIV. 34; 1 Tim. II. 12: In Phrygia and among the Montanists women appear to have exercised diaconal functions. Iren. I. 13; Hippol. VI. 34. The synod which condemned Paul of Samosata, A.D. 265, enumerates among his offences that "he prepared women to sing in the midst of the Church, which one might shudder to hear." Isidor. de Offic. II. 18, 11: Women are excluded from all degrees and offices of order. They may neither speak nor teach in Church, nor touch nor offer. Concil. Rothomag. A.D. 650, ap. Gratian III. Dist. II. c. 29: It has come to our knowledge that some priests so lightly esteem the holy mysteries that they intrust the holy Body of the Lord to a layman or a woman to carry to the sick, and commit that which is most holy to those who are forbidden to enter the holy place or to approach the altar. The synod altogether forbids the repetition of such presumption in future. Theodori Poenit. II. VII. A.D. 673, in Haddan & Stubbs III. 196: Women may not cover the altar with the corporal, nor place the oblations or the cup on the altar, nor stand amongst the ordained in Church. . . . A woman may not give penance to any one. Concil. Paris VI. A.D. 829, ap. Gratian Caus. XX. Qu. II. c. 3 forbids an abbess to veil a widow. Pseudo-Isidor. A.D. 843, *Ibid.* I. Dist. XXIII. c. 25: The Apostolic See is informed that with you consecrated women or minikins touch the sacred vessels or sacred altar-cloths, and carry incense about the altar, all of which things, as every wise man knows, ought to be reproved and rebuked. We, therefore, by the authority of the Holy See, order that these practices be exterminated as quickly as possible. Egbert's Excerpt, A.D. 740; Edgar's Law 44, A.D. 960: That no woman come near the altar while mass is celebrating. Cap. 6 Theodulf, A.D. 994: Concil. Lat. II. A.D. 1139, ap. Gratian Caus. XVIII. Qu. II. c. 25, forbids consecrated women to sing in the choir of any church with canons or monks. Innocent III. A.D. 1210, in Decret. Lib. V. Tit. XXXVIII. c. 10: We hear that in the diocese of Burgos and elsewhere abbesses bless their own nuns, hear their confessions, and, reading the Gospels, presume publicly to preach. . . . This we forbid for the future, for although the Blessed Virgin was more worthy and excellent than all the apostles, yet to these and not to her Christ committed the keys of the kingdom of heaven. Lynd. 283, 133; Hobart. 149. See *Sacraments*, § 17; and *Baptism*, note 108; the *Eucharist*, note 117.

(257). Innocent III. in Decret. Lib. III. Tit. XLII. c. 3, says the fides sacramenti is as effectual to make a man a member of Christ as the sacramentum fidei

gift (258). The ordination of one who has received heretical baptism is good whenever the baptism itself is known to be valid (259). The ordination of a child is also held to be good, but he does not thereby contract the usual obligations of order (260).

45. Physical defects which disqualify for orders are such imperfections of body as would incapacitate for the execution of the sacerdotal office, such as deformity (261), loss of a member (262), blindness or deafness (263), madness, idiocy or epilepsy (264), and also want of age; but partial lameness (265)

(258). Isidor. ap. Gratian III. Dist. IV. c. 23, and Caus. I. Qu. I. c. 59; Theodori Poenit. II. II. 13, in H. & S. III. 192, *Id.* I. IX. 12, *Ibid.* 185, quoted *Baptism*, note 139. Alexander III. in Decret. Lib. III. Tit. XLIII. c. 1; Innocent III. *Ibid.* c. 3, says the Eucharist may be received at the hands of such a priest, but he has not received the priestly character. Clinical baptism is an obstructive but not a destructive disqualification, according to Concil. Neocaesar. A.D. 314, ap. Gratian I. Dist. LVII., the orders being valid but the recipient being irregular. Devoti. Inst. Lib. I. Tit. VII. c. 7.

(259). Concil. Carthag. III. A.D. 397, ap. Gratian Caus. I. Qu. IV. c. 3.

(260). Benedict XIV., quoted by Gousset Théologie dogmatique II. 429; but as Boniface VIII. in Sext. Lib. I. Tit. IX. c. 4 forbids even the first tonsure to be given to an infant unless he enters a religious house, such ordination would in any case be irregular.

(261). Apost. Can. 77, 78, call deafness and blindness an impediment, but not the loss of an eye, or lameness. Gelasius, A.D. 494, ap. Gratian I. Dist. LV. c. 1 and LXXVIII. c. 8, forbids the bestowal of orders on one corpore vitiatus, likewise Egbert's Answer XV. A.D. 734; Decret. Lib. I. Tit. XX. Ayliffe 403; Devoti Inst. Lib. I. Tit. VII. § 6.

(262). Innocent, A.D. 410, *Ibid.* c. 6; but not if it was accidental. Stephen V. *Ibid.* c. 11.

(263). Apost. Can. 78.

(264). Concil. Tolet. XI. Can. 13, A.D. 675, ap. Gratian I. Dist. XXXIII. c. 3; Nicolaus *Ibid.* c. 4; Gelasius, A.D. 494, *Ibid.* c. 5, bases the prohibition on the ground that such seizures arise from demoniacal possession. Concil. Aurel. III. A.D. 538, Can. 6, forbids him to be ordained who is a dwarf (semus corpore) or liable to seizures (qui publice aliquando arreptus est). Egbert's Excerpt 83, A.D. 740, quotes Concil. Araus. A.D. 441, Can. 16: Those who are liable to public seizures are not only not to be admitted to any clerical order, but if they are ordained to be repelled from office.

(265). Concil. Tribur. A.D. 895, ap. Gratian I. Dist. LV. c. 10, unless it

or mutilation (266), the result of a surgical operation or inflicted by an enemy (267), are not disqualifications, neither is leprosy for one exclusively serving a lepers' church (268), but the loss of an eye is (269). Formerly it was necessary to be full twenty-four years of age before being admitted to the diaconate (270), and to have entered on the thirtieth year before admission to the presbyterate (271). Since the ninth century these requirements have been reduced (272), and now, according to the Third Lateran Council, it is sufficient to be more than twenty-two for admission to the diaconate, to be full twenty-four before admission to the presbyterate, and to be full thirty before admission to the episcopate (273). For minor orders there is no fixed age, and the tonsure may even be given to children (274).

requires him to use a staff. *Ibid.* III. Dist. 1. c. 57, which is forbidden at the oblation. See *Eucharist*, § 11.

(266). Concil. Nic. A.D. 325, *Ibid.* c. 7; Concil. Martini, A.D. 572, Can. 21, *Ibid.* c. 9.

(267). Apost. Const. 21, *Ibid.* c. 8, and authorities in notes 261 and 266.

(268). Concil. Westminster A.D. 1200, Can. 13: Wherever there are so many lepers together as can build a church with a churchyard, and have a proper priest, let them be allowed so to do.

(269). Pelagius, A.D. 555, ap. Gratian I. Dist. LV. c. 13: The Eastern Church, represented by Apost. Can. 77, says the contrary.

(270). Concil. Carthag. III. Can. 4, A.D. 397, ap. Gratian I. Dist. LXXVII. c. 5: Under twenty-five years of age let neither deacons be ordained nor virgins consecrated. Concil. Agath. A.D. 506, Can. 16, *Ibid.* c. 6; Concil. Tolet. IV. A.D. 633, Can. 20, *Ibid.* 7; Theodori Poenit. I. IX. 10, A.D. 673, in H. & S. III. 185: It is not lawful to ordain the child of a monastery [a deacon] before he is twenty-five years old. Egbert's Excerpt 91 and 95, A.D. 740.

(271). Concil. Neocaesar. Can. 11, A.D. 314, ap. Gratian I. Dist. LXXVIII. c. 4, fixes thirty for a presbyter. Concil. Aurel. III. A.D. 538, Can. 6; Concil. Arelat. IV. A.D. 524, Can. 1; Concil. Tolet. IV. A.D. 633, Can. 20; Concil. Trull. A.D. 691, Can. 14; also Concil. Martini. A.D. 572, Can. 20; and Boniface, *Ibid.* c. 1.

(272). Zaccharias, *Ibid.* c. 5, allows a presbyter to be twenty-five in case of necessity.

(273). Concil. Lat. III. A.D. 1179, Can. 2, in Decret. Lib. I. Tit. VI. c. 7; Boniface VIII. in Sext. Lib. I. Tit. X. Canon 34 of 1603 fixes the age for a deacon at twenty-three, and for a presbyter at twenty-four years complete, and this age is also required by 44 Geo. III. c. 43, sec. 1.

(274). Concil. Tolet. II. A.D. 531, Can. 1: Touching those whom the

46. It is a necessary qualification for orders to be a person of right faith and approved life ([275]). Hence a convert from heresy may not be ordained unless his heresy was involuntary ([276]). To be of approved life the candidate for orders must (1) be innocent of any enormous crime, whether committed before or after baptism, such as bloodguiltiness ([277]), directly ([278])

will of parents has devoted to the clerical office from the earliest years of infancy, we decree that as soon as they have received the tonsure, or have been advanced to the office of reader, they be instructed in the house of the Church by their provost under the bishop's eye. When they have completed their eighteenth year, let their intention in regard to marriage be inquired into by the bishop in presence of the whole clergy and people. Let those to whom, by God's inspiration, the grace of chastity is well pleasing, first be admitted to the ministry of the subdiaconate after the twentieth year of their probation is reached. Boniface VIII. in Sext. Lib. I. Tit. IX. c. 4, forbids the first tonsure to be given to a child unless he enter a religious house. Theodori Poenit. I. VIII. 14, A.D. 673, in Haddan and Stubbs III. 184: Basil held that a boy [consecrated to religion] might marry before his sixteenth year, even if he had previously been a monk. Devoti Lib. I. Tit. IV. § 15.

(275). Augustin ap. Gratian Caus. I. Qu. I. c. 87: That any one may be a true priest he must be such, not only by the sacrament [of order], but also be clothed with righteousness. Concil. Chelsea A.D. 787, Can. 6: That no bishop ordain a priest or deacon unless he be of approved life.

(276). Concil. Elib. A.D. 305, Can. 51: No one coming from any heresy may be advanced to the clergy. Can. 22 distinguishes wilful heresy from heresy of birth, and awards to the former ten years' suspension. Ambros. ap. Gratian Caus. I. Qu. I. c. 18: The law of our Church is that those baptized in heresy should be admitted to lay communion by the imposition of hands, and that no one of them should be advanced even to the lowest degree of order.

(277). Augustin ap. Gratian Caus. XXXIII. Qu. III. Dist. I. c. 23; Decret. Lib. V. Tit. XII. c. 1, 10, 20, 6, and Tit. XIV. c. 2.

(278). Apost. Can. 66: If any one of the clergy strike one in a quarrel and kill him by one stroke let him be deprived. Nicolaus, A.D. 864, ap. Gratian I. Dist. I. c. 5, 6, and 39: A clergyman who has slain a pagan may not be advanced to any higher order. John VIII. *Ibid.* c. 4: [One who has killed another] ought to be deprived of the priesthood, with a fount of tears to wash out so great an offence. Egbert's Excerpt 154–156, A.D. 740; Alfred's Law 12, A.D. 877: If a priest slay another man, let all that he has purchased with his habit be seized, and let the bishop degrade him.

or indirectly (279) committed, self-mutilation (280), unnatural crime (281), rape (282), perjury (283) or forgery (284); (2) he must be free from any known vicious or evil habit (285); (3) he must suffer from no defect of reputation (286), either general or canonical. Open inquiry must always be held to ascertain the facts of the case (287), which is now usually done by publicly reading a notice called a *Si quis*.

Cnut's Law 12, A.D. 1018: If an altar-thane be a manslayer . . . let him suffer the loss of his orders.

(279). Concil. Tolet. I. A.D. 400, Can. 8 ap. Gratian I. Dist. LI. c. 4: If any one has undertaken military service after baptism, and taken the [soldier's] cloak or girdle for killing the faithful, although he have never committed deeds so serious, let him not receive the dignity of the diaconate. Concil. Tolet. XI. A.D. 675, Can. 6 ap. Gratian Caus. XXIII. Qu. VIII. c. 30: Those by whom the Lord's sacraments are handled may not intermeddle in a cause of blood. Concil. London, A.D. 1175 Can. 3; Const. 8 Langton, A.D. 1222; Concil. Ilerd A.D. 523, Can. 1, *Ibid.* I. Dist. l. c. 36: Clergy who are engaged in a siege should remember that they who touch the Lord's Body or Blood, or handle the vessels belonging to the sacred office, should refrain from all bloodshed, including that of enemies. If they have been involved in it, let them for two years be suspended from office and communion. Soldiers' Penances, A.D. 1072; Urban II. *Ibid.* c. 37: He killed the boy by a mistake with a stone: out of kindness to you we allow him to remain in office. Lynd. 29.

(280). Concil. Nic. A.D. 325; Apost. Can. 22 ap. Gratian I. Dist. LV. c. 4; Concil. Arelat. II. Can. 7, *Ibid.* c. 5; Innocent, A.D. 410, *Ibid.* c. 6.

(281). Concil. Elib. A.D. 305, Can. 30: Those ought not to be ordained subdeacons who in their youth have been guilty of adultery, lest afterwards they should be surreptitiously promoted to a higher order. According to Duchêsne, p. 341, the candidate at Rome was required to make oath that he had never been guilty of sodomy, bestiality, adultery, or the rape of a consecrated virgin; but adultery before baptism was not a disqualification.

(282). See § 53.

(283). Ep. Zachar. ad Bonifac., p. 215; Wilkins I. 85: Lingard's Anglo-Saxon Church II. 18.

(284). Const. 1 Reynolds, A.D. 1322.

(285). Titus I. 6, 7; 1 Tim. III. 2; Concil. Nic. A.D. 325, Can. 2 and 9: Innocent III. in Decret. Lib. I. Tit. IV. c. 10; Lacy's Pontifical, p. 77: We forbid any one to seek ordination who is conscious of mortal sin, or excommunicate, or suspended.

(286). Ayliffe, 403.

(287). The practice at Rome was to present the candidates publicly to

47. Defects of general or canonical reputation include being born out of wedlock (288), being a slave or the son of a slave (289) unless with his lord's consent, or the son of a presbyter (290), having been engaged in usury (291) or other unlawful trade (292)

the people on the Wednesday and Friday before the ordination. A notary then made publication: We have elected N. to be deacon to such a title. If any one knows aught against him let him for God's sake come forward and faithfully declare it, but let him be mindful of his own communion. Duchêsne 340. Concil. Clovesho, A.D. 747, Can. 6: That bishops ordain no clerk to the degree of a presbyter till they first make open inquiry into his former life, and into his present probity of manners and knowledge of the faith. *Ibid.* Can. 24: If any secular desire to enter into the service of the holy profession, let him not receive the tonsure before his conversation and moral qualification be clearly tried. Const. 6 Otho, 1237: Let the number and names of the approved be written down, and let such as are written down be afterwards, at the beginning of the ordination, called over, by reading the list with a careful distinction.

(288). Const. 37 Edmund, A.D. 1237, quoted note 237. Const. 6 Otho, A.D. 1237; Lynd. 26; Devoti Inst. Lib. I. Tit. VII. § 13 observes that this incapacity is not of earlier date than the time of Urban II., A.D. 1095, who enforces it ap. Gratian I. Dist. LVI. c. 1. It is mentioned also by Innocent III.; but see Methodius' Banquet of the Virgins, Dist. II. c. 3.

(289). Concil. Elib. A.D. 305, Can. 8: Freedmen whose patrons are in the world may not be promoted to the clergy. Leo, Epist. 1 ap. Gratian I. Dist. LIV. c. 1; Gelasius *Ibid.* c. 12, and Dist. LXXVIII. c. 8. According to Novel. 123, *Ibid.* I. Dist. LIV. c. 20, slaves by being ordained become free. Hence the ordination of a slave would be a wrong done to his master. See *Baptism*, § 34. Concil. Tribur. A.D. 895, *Ibid.* c. 2; Decret. Lib. I. Tit. XVIII.; Const. 16 Clarendon, A.D. 1164, forbids the ordination of sons of villagers (villani) without the lord's consent, following Concil. Aurel. V. A.D. 549, Can. 6.

(290). Apost. Can. 76: According to authorities ap. Gratian I. Dist. LVI. this applies only to sons begotten during the tenure of the presbyterate. Pope Damasus was the son of a presbyter. Concil. Tolet. IX. Can. 10, A.D. 655, *Ibid.* Caus. XV. Qu. VIII. c. 3 constitutes such offspring slaves of the Church. Alexander III. to Bishop of Lincoln in Decret. Lib. I. Tit. XVII. c. 2 forbids a son to succeed his father in any office. Likewise Const. 17 Otho, A.D. 1237; Const. 22 Peckham, A.D. 1281, Lynd. 45, 46.

(291). Concil. Elib. A.D. 305, Can. 20: If any clergy are discovered to be usurers let them be deposed and excommunicated. Gregory ap. Gratian I. Dist. XLVII. c. 4.

(292). See *Eucharist*, § 23, note 272.

being generally defamed (293) or a public penitent (294), holding (295) or being liable to serve civil offices incompatible with holy orders (296), being guilty of bigamy (297), either by being the husband of a second wife (298) or of a

(293). Concil. Tolet. IV. A.D. 633, ap. Gratian I. Dist. LI. c. 5.

(294). Origen contra Celsum III. 51; Concil. Nic. A.D. 325, Can. 9; Concil. Tolet. I. A.D. 400, ap. Gratian I. Dist. l. c. 68: It is resolved that penitents be not admitted to the clergy unless necessity or custom require otherwise. § 2: We call him a penitent who after baptism has done public penance for homicide, or for some other very grave crime, and been reconciled to the altar under the Divine sackcloth. Stat. Eccl. Ant. A.D. 505, Can. 68, *Ibid.* c. 55: Let not a clergyman be ordained from among penitents, however good he may be. Innocent *Ibid.* c. 60: The canons passed at Nicaea exclude penitents even from the lower orders. Concil. Rom. A.D. 465, Can. 3, *Ibid.* I. Dist. LV. c. 3; Concil. Agath. A.D. 506, Can. 43; Concil. Gerund. A.D. 517, Can. 9: If he have not publicly in Church submitted his head to penance. Concil. Epaon. A.D. 517, Can. 3; Concil. Aurel. IV. A.D. 524, Can. 3; Concil. Aurel. III. A.D. 538, Can. 6; Concil. Martini A.D. 572, Can. 23; Gregory ap. Gratian I. Dist. XXXIV. c. 10; Egbert's Qu. XV. A.D. 734.

(295). Innocent ap. Gratian I. Dist. LI. c. 1 pronounces military men and forensic pleaders disqualified for orders.

(296). Socrates II. 41 relates that the emperor refused to exempt from civil offices those bishops against whom he was incensed. Innocent, A.D. 410, ap. Gratian I. Dist. LI. c. 2; Gelasius *Ibid.* I. Dist. LV. c. 1, and I. Dist. LXXVII. c. 8; Gregory *Ibid.* I. Dist. XXXIV. c. 10, and LIII. c. 1.; Concil. Tolet. IV. A.D. 633, *Ibid.* I. Dist. LI. c. 5; Egbert's Qu. XV. A.D. 734: Disengaged from all obligation of bearing civil offices. In the Frankish kingdom no one might be ordained without the king's permission.

(297). Concil. Elib. A.D. 305, Can. 34, forbids a layman to baptize who is bigamous. Concil. Valent. A.D. 374, Can. 1: After this synod no one who has been twice married or who has married one married before may be ordained. Apost. Const. VI. 17; Concil. Aurel. III. A.D. 538, Can. 6; Can. Hispal. II. A.D. 619, Can. 4; Can. 8 Elfric. A.D. 957: That he who marries a widow or divorced wife, or he that marries a second time, be never afterwards admitted to any order or hallowed to priest. Leo IX. A.D. 1054, ap. Gratian I. Dist. XXXII. c. 14, says that bigamy in the three senses named disqualifies for the subdiaconate, and therefore ought not to be allowed to the orders below.

(298). Tertullian ad Uxor. c. 7: How detrimental to faith second marriages are the discipline of the Church and the apostle's prescription [1 Tim. II. 1; Titus I. 6] disclose, when he suffers not men twice married

widow (299) or of a divorced woman (300), having received clinical baptism (301), and being the subject of the iteration of the sacraments either of baptism (302) or confirmation (303).

48. Want of knowledge is a further disqualification for orders (304), since one who is unlearned is unable to teach others; and this is equally true whether the defect arise from

to preside over a church. Hippolyt. Haer. IX. 7: About the time of this man [Calixtus, A.D. 220] bishops, presbyters, and deacons who had been twice married and thrice married began to be allowed to retain their place among the clergy. Apost. Can. 17: He who has been twice married after his baptism . . . cannot be made a bishop, a presbyter, or a deacon. Stat. Eccl. Ant. Can. 69, A.D. 505, ap. Gratian I. Dist. I. c. 55; Siricius, A.D. 385, *Ibid.* c. 56; Innocent *Ibid.* I. Dist. XXVI. c. 3; Hieronym. *Ibid.* c. 1; Augustin *Ibid.* c. 2; Ambros. *Ibid.* I. Dist. XXXIV. c. 14; Concil. Gerund, A.D. 517, Can. 8 *Ibid*, c. 8: If any of the laity have known a woman after his wife, let him be by no means admitted to orders. Gelasius *Ibid.* I. Dist. I. c. 59; Gregory *Ibid.* I. Dist. XXXII. c. 2; Egbert's Excerpt. 32, A.D. 740. Decret. Lib. I. Tit. XXI., and Lib. III. Tit. III. c. 9.

(299). Apost. Can. 18: He who has taken a widow or a divorced woman, or an harlot, or a slave-girl, or one belonging to the theatre, cannot be either a bishop, presbyter, or deacon. Hilary ap. Gratian I. Dist. XXXIV. c. 9; Innocent *Ibid.* c. 13; Concil. Martini, Can. 26, *Ibid.* c. 18; Siricius *Ibid.* I. Dist. LXXXIV. c. 5; Theodori Poenit. I. IX. 10, A.D. 673, in H. & S. III. 185: If any one marry a widow, either before or after baptism, he cannot be ordained, just as the bigamist cannot. This is recognised by 4 Ed. I. St. III. c. 5, A.D. 1276.

(300). Apost. Can. 18; Apost. Const. VI. 17; Concil. Neocaesarens. A.D. 314, Can. 8 ap. Gratian I. Dist. XXXIV. c. 11; Gelasius ap. Gratian I. Dist. LXXVII. 8.

(301). Cornelius in Euseb. VI. 43; Concil. Neocaesar. A.D. 314, Can. 12; Concil. Paris VI. A.D. 829, Can. 8.

(302). Concil. Carthag. V. A.D. 401, ap Gratian I. Dist. I. c. 65: It is not permitted for rebaptized persons to be admitted to clerical order. Theodori Poenit. I. X. 1, *Ibid.* III. Dist. IV. c. 117: Those who have been twice baptized in ignorance cannot, according to the canons, be ordained.

(303). Const. 2 Reynolds, A.D. 1322.

(304). Zosimus, A.D. 418, ap. Gratian I. Dist. XXXVI. c. 2; Hilarius, A.D. 465, *Ibid.* I. Dist. LV. c. 3; Augustin *Ibid.* Caus. VIII. Qu. I. c. 11; Hieronym. *Ibid.* c. 15; Symmachus, A.D. 500, *Ibid.* Caus. 1, Qu. I. c. 45: He who is advanced in honour must be regarded as most vile, unless he is distinguished for knowledge and holiness. Concil. Clovesho A.D. 747, Can. 10, requires "presbyters to know how to perform every

ignorance of letters generally (305), of the canons (306), or of Scripture (307).

office belonging to their order. And let them who know it not learn to construe and explain in our own tongue the creed and Lord's prayer, and the sacred words which are solemnly pronounced at the celebration of mass and in the office of baptism. Let them also take care to learn what the sacramental signs (sacramenta) which are visible in the mass, baptism and other ecclesiastical offices, do signify, lest they be found dumb and ignorant in those intercessions which they make to God." By 9 Ed. II. St. I. c. 13, A.D. 1315, the examination of sufficient knowledge belongs to the spiritual judge, and herein, says Coke 2, Inst. 631, he is a judge and not a minister. See above, § 34.

(305). Stat. Eccl. Ant. Can. 16, A.D. 505, ap. Gratian I. Dist. XXXVII. c. 1, forbids the reading of heathen books from desire to imitate them. Hieronym. *Ibid.* c. 2–6, forbids the reading of heathen comedies and such like. Ambrosius, however, *Ibid.* c. 10, requires grammar to be studied for the understanding of Scripture. Gelasius *Ibid.* I. Dist. LXXVII. c. 8, requires a candidate to be disciplinis ministerialibus eruditus. For without knowledge of letters he would not be fit to hold even a doorwarden's place. Concil. Aurel. II. A.D. 533, Can. 16: A presbyter or a deacon without letters, or one who knows not the order of baptizing, let him not be in order (ordinetur). Concil. Narbon. A.D. 589, Can. 11, forbids any one to be ordained who cannot read, and directs him to be put in a monastery to learn. Baeda ap. Gratian I. Dist. XXXVII. c. 8, says it blunts the intelligence to forbid the study of secular literature. Decret. Lib. I. Tit. XIV. c. 15, orders a bishop to be deprived who is ignorant of grammar.

(306). Concil. Carthag. III. A.D. 397, Can. 3: Bishops or clergy about to be ordained ought first to have the decrees of councils read over to them, lest they should have to repent of having contravened them in any way. Coelestin. A.D. 429, ap. Gratian I. Dist. XXXVIII. c. 4: No priest [*i.e.*, bishop] may be ignorant of the canons, nor do anything contrary to the rules of the fathers. Concil. Tolet. IV. A.D. 633, Can. 25: Ignorance is the mother of all errors. . . . Therefore presbyters must know Holy Scripture and the canons, that their whole work may consist in preaching and teaching.

(307). Hieronym. ap. Gratian I. Dist. XXXVIII. c. 6: Ignorance of the Scriptures is ignorance of Christ. Augustin *Ibid.* c. 11, 12, 14: The expressions of Holy Scripture must be taken according to the language in which the several books were written. For every language has its own peculiarities of diction which, when translated into another tongue, seem absurd. Pseudo-Isidor. *Ibid.* c. 8: As the stars of heaven are not put out by the darkness of night, so the minds of the faithful cleaving to the firmament of Holy Scripture are not darkened by the iniquity of

49. Every candidate for orders must likewise have a proper election or title, by which is meant that he must have received a mandate to act for some recognised Church or spiritual foundation, which has in return undertaken to provide him with a maintenance (308). Formerly ordination without a title was ordered to be annulled (309), but since the twelfth century it only obliges the ordaining bishop to maintain the person ordained until he has provided him with some benefice (310),

the world. *Id. Ibid.* c. 16: No bishop because of his age or station should be above learning from the youngest or the least instructed. Concil. Arelat. A.D. 813, Can. 3 ap. Labbé VII. 1235: Let priests, therefore, know the Holy Scriptures and the canons.

(308). Coelestin. A.D. 431, Epist. IV. to bishops of Gaul, c. 2, complains of bishops being ordained without attachment. Concil. Chalcedon A.D. 451, Can. 6 ap. Gratian I. Dist. LXX. c. 1: Let no one be ordained without an attachment (ἀπολελυμένως), neither presbyter, deacon, nor any one in the order of the clergy. Concil. Chelsea A.D. 787, Can. 6: Let a presbyter continue in that title to which he was blessed, so that none presume to receive a presbyter or deacon from the title that belongs to another. Concil. London, A.D. 1126, Can. 8: Let none be ordained presbyter or deacon, but to some certain title; if he be, let him not enjoy the honour of his order.

(309). Concil. Chalcedon A.D. 451, Can. 6: As regards those who are ordained without attachment (ἀπολύτως), the holy synod has determined that such an ordination is to be held unratified (ἄκυρον; elsewhere the ratification, τὸ δὲ κύρος, belongs to the metropolitan), and cannot have any effect [to give a position in the Church], because of the contempt of him who ordains. Concil. Placent. A.D. 1095, ap. Gratian I. Dist. LXX. c. 2: We decree, in conformity with the statutes of the holy canons, that an ordination made without title shall be a nullity (irritam). Concil. Westminster A.D. 1125, Can. 8: Innocent III. A.D. 1198, in Decret. Lib. III. Tit. V. c. 16: Although our predecessors declared ordinations made without a title to be null and void (irritas atque inanes), we, taking a milder view, decree, &c. Concil. Westminster A.D. 1200, Can. 6.

(310). Liber canonum in Decret. Lib. III. Tit. V. c. 2: A bishop may not ordain clergy without giving them a maintenance; but let him choose one of two things: either let him not ordain or let him find the means of living. Concil. Lat. III. Can. 5, A.D. 1179. *Ibid.* c. 4: If a bishop ordain any one without a certain title, let him maintain the clerk until he can make a clerical provision for him in his own Church. Concil. Westminster A.D. 1200, Can. 5, repeats this. Innocent III. in Decret. Lib. I. Tit. XIV. c. 13, and Lib. III. Tit. V. c. 16, obliges the bishop's successor to maintain him

unless the person ordained has a sufficient patrimony of his own (311).

50. There is a difference, nevertheless, between disqualifications. Some are relative and can be cured by time or study, such as want of age or knowledge; others are absolute and can never be cured, such as mental imbecility. Some are of human creation, allowed out of deference to the prejudices of the times, and can be dispensed with, such as being the son of a slave or a priest; others, which are necessary for the exercise of order, cannot be dispensed with. A dispensation is rarely given in case of homicide. It may not be given in cases of simony (312), unless the person ordained was himself innocent of the simony (313), and it cannot be given in cases of madness or imbecility (314), because without a sufficient cause no dispensation avails. For minor orders dispensations may be granted by the bishop who has jurisdiction (315), but unless the disqualifications are of provincial creation, a dispensation can only be given for holy orders by the collective Church in synod, or through its patriarchal representative (316).

### Clerical Irregularity.

51. As certain things disqualify for admission to holy orders, so the same things if found in those already ordained or subsequently incurred disqualify for the exercise of order, on the ground that the dignity of the sacred ministry forbids one who has been ordained against the rules of the Church, or who has

until he provides him with a title. Const. 6. Otho, A.D. 1237; Can. 33 of 1603; Ayliffe, 401, 403.

(311). Pseudo-Hieronym. ap. Gratian Caus. XVI. Qu. 1. c. 68, § 2: Those clergy ought to be supported out of the revenues of the Church who have no assistance from parents or relatives; but those whose parents or relatives can support them commit sacrilege if they receive what belongs to the poor.

(312). Gratian Caus. I. Qu. 1. c. 8, 107, 109; Qu. VII. c. 2.

(313). *Ibid.* c. 108.

(314). Devoti Inst. Lib. I. Tit. VII. § 17.

(315). Boniface VIII. in Sext. I. Lib. I. Tit. XI. c. 1.

(316). *Id. Ibid.*

himself transgressed the rule of life of Christians in general, or of the clerical estate in particular, to exercise his office (317) until he has put himself right with God and the Church. Such persons are said to be irregular, and the disqualifying circumstance, which may not be a sin at all, is called an irregularity. An irregularity may therefore be defined to be a canonical

(317). Concil. Nic. A.D. 325, Can. 9: Whoever have been promoted to be presbyters without examination, or, having been examined, have confessed their sins, and yet men acting contrary to the canon have laid hands on them, such as these the canon does not admit of. For the Catholic Church justifies only that which is blameless. Apost. Can. 18 and Concil. Martini ap. Gratian I. Dist. l. c. 8. Siricius, A.D. 385, *Ibid.* c. 56, decrees respecting such as contrary to rule (indebite), and without proper qualification (incompetenter) have crept into the sacred militia, that they are to esteem it a great kindness to be allowed to remain in their present degree without hope of advancement. Ambros. *Ibid.* Caus. XXXIII. Qu. III. Dist. l. c. 56, § 2: No one involved in sins ought to arrogate to himself authority over the exercise of the sacraments. Theodori Poenit. I. X. 1 in H. & S. III. 185: Such as have been in ignorance twice baptized cannot, according to the canons, be ordained, unless some urgent necessity require it. Pseudo-Isidor. ap. Gratian Caus. VI. Qu. l. c. 17: We call those persons of ill-repute who, for some fault, are branded with ill-repute, *i.e.*, all who throw aside the rule of Christian law, and despise the statutes of the Church; likewise thieves, sacrilegious persons, and all involved in capital offences, robbers of the dead, those intentionally violating the rules of the fathers, . . . those guilty of incest, murder, perjury, rape, poisoning, or adultery, runaways in warfare, those who hold discreditable posts or unjustly withdraw the property of the Church, those who slander others, or make accusations without proving them, or who stir up the ill-will of princes against the innocent, all those anathematised for their crimes, and all whom the laws of the Church and the world pronounce infamous. Egbert's Excerpt. 32, A.D. 740, and Elfric Can. 8, A.D. 957. Const. Edmund, A.D. 1236: We conceive them to be irregular who have committed murder, or have been advocates in causes of blood, simoniacs, transactors of simoniacal bargains, and who knowingly received orders from such as were under that blemish, or that were ordained by schismatics, heretics, or such as were excommunicated by name, such as have been twice married, or married to such as were not virgins, corrupters of nuns, excommunicates, such as get orders by stealth, sorcerers, burners of Churches, and such like. Gratian I. Dist. XXXIII.; Lacy's Pontifical 77; Craisson, § 1742.

disability (318), which either (1) hinders the reception of order, or (2) hinders the exercise of order, or (3) excludes from office in the Church, not rendering the reception and exercise of order void and a nullity, but rendering the person who is knowingly guilty of such reception and exercise spiritually criminous.

52. An irregularity may arise from one of two causes: (1) from a fault which is not the individual's fault, in which case it is called a defect, or (2) from a fault which is his own, such as disobedience to a rule of the Church, or conduct rendering impossible the exercise of his order. The latter is called a crime (319). To constitute an irregularity of the latter kind, however, a crime must be (1) enormous, (2) a crime of actual commission and not of intention only (320), and (3) be publicly known, and a source of scandal (321), since one who has been publicly accepted by the Church as a righteous man of availing prayer does not cease to be representatively such until unrighteousness has, with equal conclusiveness, been brought home to him.

53. All the canonical disqualifications for the reception of orders arising from defects are disqualifications for their exercise also, and are causes of irregularity; such as defects (1) of mind, (2) of body, (3) of birth, (4) of age, (5) of reputation, notably having exercised a calling held to be degrading in public esteem, such as that of actor, butcher, or publican (322), (6) of civil position, (7) of lenity, and (8) of baptism. Disqualifications which arise from mortal sin are

(318). Lynd. 28: Quoddam impedimentum proveniens ex constitutione canonica.

(319). Isidore de Offic. II. 5, 17: If a bishop or a presbyter is guilty of mortal sin, the execution of his office is withdrawn. Both disobedience and evil conduct are called crimes in Const. 3 Edmund, A.D. 1236; Const. 5 Thoresby, A.D. 1363.

(320). Concil. Lugdun. A.D. 1245, in Sext. Lib. II. Tit. XIV. c. 1; Lynd. 74, 155: In penal matters, in order to incur a penalty, it is not enough that the act be begun, it must also be completed.

(321). Lynd. 29.

(322). Concil. Vien. A.D. 1311, in Clem. Lib. III. Tit. 1. c. 1; Lynd. 169.

not, however, always causes of irregularity, but only those which have been declared to be such by the general law of the Church (323). These include (1) the iteration of baptism or confirmation, which if knowingly done renders both the baptizer and the baptized irregular (324); (2) heresy (325); (3) the usurpation or pretended exercise of order by one who does not possess it (326); (4) obtaining orders improperly, as by stealth (327), at a bound (328), by a married man without his wife's consent (329), or from an excommunicated bishop (330); (5) killing (331) or maiming (332) another; (6) violating a censure by officiating when suspended (333) or excommunicated by sentence of law or a judge (334); and (7) infamy arising from being

(323). Gregor. VIII. in Sext. Lib. v. Tit. XL. c. 28.

(324). See note 302. Const. 2 Reynolds, A.D. 1322.

(325). Ambros. ap. Gratian Caus. I. Qu. I. c. 18, quoted above, note 276.

(326). Honorius III. in Decret. Lib. v. Tit. XXVIII. c. 1; Const. 4 Thorsby, A.D. 1363.

(327). Alexander III. in Decret. Lib. v. Tit. XXX. c. 1; Lacy's Pontifical, p. 77. Const. 4 Thorsby, A.D. 1363.

(328). Innocent III. in Decret. Lib. v. Tit. XXIX.

(329). John XXII. in Extrav. Com. Tit. VI.

(330). Urban II. ap. Gratian Caus. IX. Qu. I. c. 4.

(331). Innocent, A.D. 404, *Ibid.* 1 Dist. LI. c. 1, and Caus. XXIII. Qu. VIII. c. 2; Ambros. *Ibid.* c. 3; John VIII. *Ibid.* 1 Dist. I. c. 4; Can. 20 Dunstan, A.D. 963: If a bishop or a mass-priest kill a man, let him forfeit his order, and ever earnestly make satisfaction. Const. 1 Edmund, A.D. 1236. Lynd. 29.

(332). Innocent I. ap. Gratian I. Dist. LV. c. 6; Innocent III. in Decret. Lib. v. Tit. XII. c. 18.

(333). Innocent, A.D. 416, *Ibid.* I. Dist. LXXXII. c. 2: Gregory IX. in Decret. Lib. v. Tit. XXVII. c. 9: Because during the time of suspension you celebrated divine service in ignorance thereof, probable ignorance excuses you. Concil. Lugdun. II. A.D. 1274, in Sext. Lib. v. Tit. XI. c. 1; Const. 1 Peckham, A.D. 1279; Lynd. 27, 114, 120, 124. As to what is understood by officiating, see Craisson, § 1790. The Roman College ruled, 19th July 1704 and 11th Sept. 1717, that no irregularity is incurred in disregarding a censure, valid in the outer forum, but a nullity before God.

(334). Const. 3 Peckham, A.D. 1279: Being *ipso facto* suspended, you have performed your offices, . . . and have thereby incurred an irregularity. Const. 5 Winchelsea, A.D. 1305: If any priest presumes to officiate

judicially convicted of falsification, perjury (335), sorcery, arson, rape of a consecrated virgin (336), or unnatural crime (337).

54. The gentleness or lenity required of the clergy forbids them to be concerned indirectly as well as directly in any matter involving the loss of life or limb to another. Hence they not only become irregular if they have actually slain a human being with intent to kill him (338), but also if they have been in any way concerned in taking life, as judges or legislators (339), as advocates or clerks in court (340), or by having performed a surgical operation if death supervenes (341). If homicide was purely accidental whilst they were otherwise lawfully employed, they do not become irregular (342), nor if

contrary to this prohibition, let him incur an irregularity. Const. 4 Thorsby, A.D. 1363, declares a priest irregular who pretends to give absolution from the greater crimes.

(335). Concil. Agath. A.D. 506, ap. Gratian I. Dist. l. c. 7, names falsification and false witness. Lynd. 114.

(336). Concil. Westminster, A.D. 1200, Can. 7: Let a general excommunication be yearly denounced against sorcerers, such as are foresworn, incendiaries, violent ravishers.

(337). Concil. Westminster, A.D. 1102, Can. 28: If any ecclesiastical person be guilty of sodomy . . . let him be degraded from that order in which he is.

(338). Can. Apost. 17; Concil. Ancyr. A.D. 314, Can. 21; Concil. Brac. II. A.D. 572, Can. 26, ap. Gratian I. Dist. l. c. 8: If he is conscious of homicide, either by act, by command, by counsel, or by self-defence. Alexander III. to Bishop of Exeter in Decret. Lib. v. Tit. XII. c. 6; Innocent III. *Ibid.* c. 18. See note 331.

(339). Minucius Felix circa, A.D. 200, c. 30: To us it is not lawful either to see or to hear of homicide. Alexander III. in Decret. Lib. v. Tit. XVII. c. 4; *Id.* to Archbishop of Canterbury, *Ibid.* Lib. III. Tit. l. c. 5; Concil. Lat. IV. A.D. 1215, Can. 18, *Ibid.* c. 9.

(340). Const. 9 Langton, A.D. 1222; Decret. Lib. v. Tit. XII. c. 11 and 18; Tit. XV. c. 2, and Tit. XXXI. c. 10; Sext. Lib. v. Tit. IV. c. 2; Clem. Lib. IV. Tit. IV.: Hence when the statute 11 Ric. II. c. 1 was passed in 1387, attainting the Archbishop of York and others of high treason, the Lords Spiritual withdrew from Parliament. Lynd. 269, 270; Lacy's Pontifical, p. 77.

(341). Concil. Turon. A.D. 1065, in Decret. Lib. III. Tit. l. c. 10; Innocent III. *Ibid.* Lib. v. Tit. XII. c. 19.

(342). Concil. Ancyr. A.D. 314, Can. 22; Concil. Brac. II. A.D. 572, ap.

it was done in self-defence without recourse to unnecessary violence (343). Nor does the contravening of a sentence of excommunication constitute irregularity, unless it was a sentence of the greater excommunication (344).

55. Irregularities may cease in one of four ways: (1) by baptism, which takes away all previous faults and offences whatsoever; (2) by the lapse of time, or study, or absence, as in the case of one too young, or too unlearned, or who has publicly admitted some crime short of the denounced crimes; (3) by entering a religious order; or (4) by a dispensation (345). A bishop is not qualified to grant such a dispensation, except in a few cases (346), or when the cause of the irregularity is not publicly known. In other cases it must come from the whole Church or the greater metropolitan as its proper representative (347).

Gratian I. Dist. l. c. 44; Alexander III. in Decret. Lib. v. Tit. XII. c. 7; *Id.* to Bishop of Exeter, *Ibid.* c. 9; Honorius III. to Archbishop of York, *Ibid.* c. 22; Concil. Vien. A.D. 1311, in Clem. Lib. v. Tit. IV. See *Crimes*, and Clem. III. in Decret. Lib. I. Tit. XIV. c. 7.

(343). Unknown author ap. Gratian I. Dist. l. c. 38; Poenit. Rom. in Decret. Lib. v. Tit. XII. c. 2; Innocent III. *Ibid.* c. 18.

(344). Innocent III. in Decret. Lib. v. Tit. XXVII. c. 10: If one celebrate whilst under sentence of the lesser excommunication, although he sins grievously, yet he does not thereby incur the stain of irregularity.

(345). Const. 37 Edmund, A.D. 1236; Alexander III. in Decret. Lib. III. Tit. III. c. 4; Lynd. 28, 114; Ayliffe 219.

(346). Concil. Brac. II. A.D. 572, ap. Gratian I. Dist. l. c. 22. Lynd. 27 says he must have the intention to dispense, and not be acting in ignorance. Decret. Lib. I. Tit. XVII. c. 5, and Lib. v. Tit. XXVII. c. 10; Lib. II. Tit. l. c. 4, mention the cases in which a bishop can dispense. Stephen's Eccl. Stat. p. 167: By secret sin is understood one which it has not been sought to establish contentiously. Craisson, § 1840.

(347). In this country the archbishop.

# VI.

# PRIVILEGES AND DUTIES OF ORDER.

## Privileges of Order.

1. Every step or degree in order carries with it its own privileges, and also entails its own duties in the Church. These privileges and duties are partly temporal, partly spiritual. Temporal privileges and duties depend upon the laws of each particular community, and the degree in which the Church is favoured by the State and allowed by it to exercise coercive jurisdiction. Spiritual privileges and duties depend upon the law of the Church.

2. Formerly the temporal privileges of order were large, and extended both to the persons and property of the clergy (1).

(1). Lynd. p. 68 enumerates fourteen privileges as enjoyed by the clergy in his time, A.D. 1429 : (1) they may not be convened before a secular judge, Decret. Lib. II. Tit. II. c. 12 ; (2) any one striking a clerk comes under the canon, Gratian Caus. XVII. Qu. IV. c. 29 ; (3) they are not liable to secular services, Decret. Lib. III. Tit. XLIX. c. 4 ; (4) they can form a corporation when laymen cannot, Decret. Lib. III. Tit. XVII. c. 6, and Lib. V. Tit. XXXI. c. 14 ; (5) they can sell a thing given to the Church before delivery ; (6) their households possess the same privileges that they do personally ; (7) those making statutes to their detriment are *ipso facto* excommunicate, Sext. Lib. III. Tit. XXIII. c. 5 ; (8) none but those in orders can hold spiritual benefices, Decret. Lib. I. Tit. XXXVI. c. 6 ; (9) a clerk cannot be convened by general words in a citation addressed to laymen ; (10) in a civil cause they cannot be compelled to pay more than four *siliquae* by way of court-fee ; (11) they can dispose of their effects although they are under age ; (12) they can litigate to protect their property if minors without their father's consent ; (13) they cannot be attached as pledges ; (14) a slave becoming a clerk with his lord's knowledge is thereby emancipated. Briefly, says Lyndwood, these privileges may be summed up in the two following : (1) they may not be personally molested ; (2) they may not be molested by exactions in purse or pocket. Whether these privileges belong to them in a Christian community by divine right or by concession of princes is a point on which doctors disagree. Bouix de judiciis I. 89 and 90.

The usage of modern times has withdrawn all privileges from minor orders and tonsured persons, and only left to those in holy orders such personal privileges as are required for their public ministrations. In this country they still enjoy freedom from arrest, assault, or molestation, whilst executing their public duties (2), and are exempt from civil duties incompatible with their calling (3), such as military service (4) and serving on juries which might involve capital punishment (5). They are also permitted to retain their own private property (6), and to

(2). Can. 38 Dunstan, A.D. 963; Concil. Westminster A.D. 1138, Can. 10: Let him be struck with anathema that kills a clerk, . . . or lays wicked hands on such. Concil. Lat. II. A.D. 1139, Can. 15 ap. Gratian Caus. XVII. Qu. IV. c. 12: Should any one at the devil's bidding incur the charge of sacrilege by laying violent hands on a clerk, let him be under the ban of anathema. Concil. Westminster A.D. 1200, Can. 10.

(3). Isidor. ap. Gratian I. Dist. XXIII. c. 3: Let them lay aside secular offices and business. Egbert's Qu. 15, A.D. 734; Concil. Westminster A.D. 1102, Can. 8 forbids their being reeves or agents to secular persons in cases of blood. Concil. Westminster A.D. 1138, Can. 9; Const. 8 Langton, A.D. 1222; Const. 6 Othobon, A.D. 1268, forbids all rectors, perpetual vicars, and priests whatsoever to accept of secular jurisdiction from a secular person.

(4). Concil. Tolet. IV. A.D. 633, Can. 44, ap. Gratian Caus. XXIII. Qu. VIII. c. 5: Clergy who take or have taken arms spontaneously in any dispute shall lose their degree and do penance in a monastery; and Can. 47; Concil. Melden. A.D. 845, Can. 37, *Ibid.* c. 6: Let none of the clergy take military arms or go forth armed. Concil. Westminster A.D. 1138, Can. 5: We allege the authority of Pope Nicolas, who says, Since the soldier of Christ and the secular soldier differ from one another, it becomes not a soldier of the Church to bear secular arms. Concil. London A.D. 1175, Can. 11: Let none that would appear to be clerks wear or bear arms. Const. 4 Othobon, A.D. 1268: The use of offensive and vindictive arms is forbidden to clerks, . . . and that even in a just cause. See *Order*, § 46, note 278.

(5). Concil. Tolet. XI. Can. 6, A.D. 675, ap. Gratian Caus. XXIII. Qu. VIII c. 30: Egbert's Excerpt 155, 156, A.D. 740; Concil Westminster A.D. 1102, Can. 8; Concil. London A.D. 1175, Can. 3: Let not a man in holy orders. be concerned in judgments concerning blood, nor by himself, nor by any other inflict deprivation of member. Const. 8 Langton, A.D. 1222; Const. 7 Othobon, A.D. 1268: We forbid clerks to exercise the office of advocates in a secular court in a cause of blood. See *Order*, note 339.

(6). Augustin ap. Gratian Caus. XII. Qu. I. c. 18: Those who wish to

dispose of the same by will, with certain restrictions, to whom they please (7). On the other hand, whilst bishops are summoned to sit in the upper house of Parliament by virtue of their temporal baronies, yet the rest of the clergy, although possessing benefices, are not permitted to sit in the lower house (8).

3. The spiritual privileges to which order entitles include (1) the privilege of participating in the Eucharistic offering everywhere in the degree of order to which they belong (9); (2) the privilege of being treated with deference by every degree in order below their own (10); and (3) the privilege of

have property, to whom God and His Church is not enough, let them remain where they wish and can; I do not take away the exercise of their order, I desire to have no hypocrites with me. Concil. Paris A.D. 829, *Ibid.* Qu. v. c. 4; Alexander III. in Decret. Lib. III. Tit. XXVI. c. 9, 12.

(7). Apost. Can. 40 ap. Gratian Caus. XII. Qu. I. c. 21: Let the proper goods of the bishop and those belonging to the Lord be openly distinguished, that he may have power when he dies to leave his own goods to whom he pleases. Gregory, A.D. 602, *Ibid.* Qu. v. c. 1; Concil. Hispal. A.D. 619, *Ibid.* c. 4; Concil. Altheim in Decret. Lib. III. Tit. XXVII. c. 1; Const. 8 Stratford, A.D. 1343. But Const. 32 Langton, A.D. 1222: If clergymen leave anything to their concubines, let it be converted to the use of the Church. Const. 34 Langton, and Const. 30 Mepham, A.D. 1330, repeat the same. Lynd. 165; Concil. Carthag. III. A.D. 397, Can. 13, forbids bishops or clergy to make donations to non-Catholics.

(8). The House of Commons resolved, in 1553, that no person having a voice in the Convocation House could have a voice in that house. Act Geo. III. c. 63 declared that no person in holy orders should be capable of being elected to Parliament.

(9). Apost. Const. II. 58: If a presbyter come from another place, let him be received to communion by the presbyters; if a deacon, by the deacons; if a bishop, let him sit with the bishop, and be allowed the same honour with himself; and thou, O bishop, shalt desire him to speak to the people words of instruction. Stat. Eccl. Ant. A.D. 505, Can. 33: If bishops or presbyters come to another church for the sake of visiting it, let them be received in their degree and be invited both to speak the Word and to consecrate the oblation. Hilary Quaes. in Vet. et. Nov. Test. A.D. 375, Qu. CI.; Before God the honour remains to each one who has been told off to ecclesiastical offices, so that he who is a deacon enjoys the honour of the diaconate in every Church.

(10). Hieronym. ap. Gratian I. Dist. XCV. 6, 7, requires bishops and

being judged by spiritual judges in all matters not involving temporal rights (11). Even in matters involving temporal rights those in holy orders are forbidden by the canons to resort to secular tribunals (12), except when justice may not or cannot

presbyters to honour one another. Concil. Laodic. A.D. 363, Can. 56, *Ibid.* c. 8, forbids presbyters to enter Church before the bishop. Concil. Laodic. Can 20, *Ibid.* c. 15, forbids deacons to sit in the presence of presbyters. Gregory *Ibid.* I. Dist. LXXXIX. c. 7. Gregory Ep. 54 ad episc. Galliarum, reproduced by Pseudo-Isidor. *Ibid.* I. Dist. XCIII. c. 5: Let the presbyter give place to the bishop, the deacon to the presbyter, the subdeacon to the deacon, the collet to the subdeacon, the exorcist to the collet, the door-keeper to the reader. Nicolaus *Ibid.* I. Dist. XXI. c. 4, applies the same rule to degrees of jurisdiction.

(11). Concil. Paris A.D. 615, ap. Gratian Caus. XI. Qu. I. c. 2: Let no one presume to accuse or condemn a presbyter, deacon, or other of the clergy without the bishop's license. Concil. Agath. A.D. 506, Can. 32, *Ibid.* c. 17 & 47. Concil. Matiscon I. A.D. 583, *Ibid.* c. 6: Let no clerk accuse another clerk before a secular judge, or in any way call upon him to answer there. Gregory, A.D. 603, *Ibid.* 38, 39. Alfred and Guthrum's Law 3, A.D. 873: If a man in orders commit a capital crime let him be reserved to the bishop's doom. Egbert's Excerpt. 140, A.D. 740; Edgar's Law 7, A.D. 960; William's Mandate, A.D. 1085: Let no bishop or archdeacon hereafter bring those causes before the secular judicature which concern the government of souls. Const. 3 Clarendon, A.D. 1164: Clerks being accused of any matter are to come to make answer thereto to whatever the king's court shall think fit, and likewise to the ecclesiastical to make answer to whatever shall be there thought fit, but so that the king may send to the court of Holy Church to see how matters are there carried. By 9 Ed. II. St. 1, c. 13, A.D. 1315, the qualification of a clerk is triable by the spiritual judge, and by 25 Ed. III. c. 8, confirmed by 13 Car. II. c. 12 and *Hill* v. *Barne* 2 Levinz 250, the question of voidance of a spiritual cure. Lynd. 270. Soglia Inst. juris. publ. § 58, says: Clergy are bound in conscience to obey those civil laws which do not detract from their position, not because of their coercive, but because of their directive power.

(12). 1 Cor. VI. 1, conf. v. 12; Epist. Clem. ad Jac. 10: Let not those who have disputes go to law before the civil powers, but let them by all means be reconciled by the elders of the Church, and let them readily yield to their decision. Tertullian Apol. c. 1: If a Christian is accused [before a secular judge] he offers no defence. Cyprian, Testimonies against the Jews, A.D. 255, Lib. III. c. 44; Concil. Antioch. A.D. 341, Can. 12 ap. Gratian Caus. XXI. Qu. V. c. 2, forbids a condemned presbyter to appeal to

be had from spiritual judges (13). They are also held liable in conscience for all profits made out of their spiritual position (14), and formerly the Church was deemed to be the heir of every bishop who died intestate (15).

the emperor, and Can. 11, *Ibid.* Caus. XXIII. Qu. VIII. c. 27, forbids a bishop to do the same without the metropolitan's leave. Apost. Const. II. 46; Concil. Const. A.D. 382, Can. 6; Concil. Carthag. III. A.D. 397. Can 9, *Ibid.* Caus. XI. Qu. I. c. 43: Whatever bishop, presbyter, or deacon when charged with a crime seeks to clear himself before a secular judge, let him lose his position. Stat. Eccl. Antiq. A.D. 505, Can. 87; Concil. Chalcedon A.D. 451, Can. 9, *Ibid.* c. 46; and in Decret. Lib. II. Tit. II. c. 1: If any clerk hath a suit against another clerk let him not leave his own bishop and run to the secular court of justice, but let him first try the question before his own bishop. Concil. Aurel. III. A.D. 524, Can. 4; Martin Brac. A.D. 572, c. 5; Concil. Tolet. III. A.D. 589, *Ibid.* Caus. XI. Qu. I. c. 42; Egbert's Excerpt 16, A.D. 740: That no priest sue in the secular courts, relinquishing his own law. Decret. Lib. II. Tit. II. c. 12, and Lib. I. Tit. XXXVII.; Const. 4 Thorsby, A.D. 1363, enumerates among greater crimes: When a clerk sues in the secular judicature in contempt of the ecclesiastical judge. Hooker VIII. 8, 9: If the cause be spiritual, secular courts do not intermeddle with it. Boldly and lawfully we may refuse to answer before any civil judge in a matter which is not civil, so that we do not mistake the nature of the cause or the court. It should nevertheless be borne in mind that in this country a bishop has been known to condemn a perfectly innocent man without a hearing of any kind, because the latter refused before a secular judge to defend himself against irrelevantly introduced insinuations of misconduct otherwise than by a simple denial upon oath.

(13). In Acts XXIII. 11 St. Paul is compelled to appeal to Cæsar. Concil. Aurel. I. A.D. 511, Can. 8 ap. Gratian Caus. II. Qu. VII. c. 20, allows a secular court to be applied to against a bishop on a purely temporal matter, provided no charge of crime is made against the bishop. Edward's Law 7, A.D. 1064: If the guilty person despise the bishop's sentence, let complaint of it be brought to the king after forty days. Lynd. 278 says that to obtain redress for a private wrong application may be made by a clerk to a temporal judge, and also, p. 264, when redress cannot be had from a spiritual judge. So also Craisson, § 276.

(14). Concil. Carthag. III. A.D. 397, Can. 49; Codex Eccles. Afric. 32; Concil. Lat. III. A.D. 1179, Can. 15, in Decret. Lib. III. Tit. XXVI. c. 7; Alexander III. *Ibid.* c. 9 and 12, and Tit. XXV. c. 1–5.

(15). Concil. Tarracon. A.D. 516, Can. 12 ap. Gratian Caus. XII. Qu. V. c. 6; Concil. Altheim in Decret. Lib. III. Tit. XXVII. c. 1, says the same of a presbyter.

4. To entitle them to these spiritual privileges in any part of the Church other than that to which they belong, it is necessary for them to have letters commendatory from their own bishop ([16]), and by mediaeval rule to have also a proper clerical tonsure and dress ([17]). By the rule of the 6th century those who come from parts beyond sea ought also to bring testimonials bearing the signatures of five bishops ([18]).

## The General Duties of Orders.

5. The duties of order include (1) the general duties of all ordained persons, (2) the special duties of those in holy orders, and (3) the particular duties of each degree in order. The general duties of all ordained persons are the same as those of all baptized persons, but in a higher degree, and consist in not being ashamed of Him whose service they have entered, but

(16). Apost. Const. II. 58; Concil. Carthag. I. Can. 5, A.D. 348, ap Gratian I. Dist. LXXI. c. 6; Leo Epist. 82, c. 9, A.D. 446, *Ibid.* Caus. XIX. Qu. II. c. 1: Let no one receive a strange clerk against his bishop's will. Concil. Chalcedon A.D. 451, Can. 13, *Ibid.* c. 7: Strange clergy and readers should by no means officiate in any other city without letters commendatory from their own bishop. Concil. Antioch. A.D. 341, Can. 7: No strange clerk ought to be received without letters in proper form. Concil. Agath. A.D. 506, Can. 52: Let no one give the communion to a presbyter, deacon, or clerk who goes about without his bishop's letters. Concil. Hertford A.D. 673, Can. 5: That no clerk leaving his bishop go up and down at his own pleasure, nor be received wherever he comes without the commendatory letters of his bishop. Concil. Remens. A.D. 625, Can. 12: That no clerk be received who goes about without his bishop's letters. Egbert's Excerpt. 60, A.D. 740; Concil. Chelsea A.D. 747, Can. 6: That none presume to receive a presbyter or deacon from the diocese of another without a reasonable cause and letters commendatory. Decret. Lib. I. Tit. XXII.

(17). Const. 20 Boniface, A.D. 1261: All who would enjoy clerical privilege must be decently clipped and have a shaven crown.

(18). Pseudo-Isidor. ap. Gratian I. Dist. XCVIII. c. 1, 12: Let no man receive to clerical honour any from beyond seas unless they bring with them a testimonial signed by five bishops. Gregory *Ibid.* c. 3: Let no Africans be received to orders, because many Africans are Manichaeans and have been rebaptized, and many strangers in minor orders have pretended to have a higher degree.

confessing Him before men (19), and in seeking to advance the Kingdom of God in the world by every good work (20).

6. To show that they are not ashamed of Him whose service they have entered, it has been usual for clergy, ever since the days of persecution were over, to wear their hair closely trimmed, and not to allow the beard to grow unkempt (21). This trimming of the hair appears to have originated by way of protest against the mundane habit of wearing long hair (22), and

(19). See *Baptism*, § 29.

(20). Syn. Rom. A.D. 826, ap. Gratian Caus. v. Qu. III. c. 3 : The bishops and all the clergy are appointed only for the glory of God, and the performance of every good work. Can. 4 Odo, A.D. 943 : We admonish presbyters that they teach their people by their good example in the holy habit, and instruct and inform them by their holy doctrine that their conversation excel the manners of the people in all goodness and modesty, that they who see them walking apparelled according to the dignity of the priesthood may with good reason speak commendably of their habit. Concil. Lat. II. A.D. 1139, Can. 4 ap. Gratian Caus. XXI. Qu. IV. c. 5 : Let bishops and other clergy, both in their state of mind and habit of body, seek to please God and man, and neither by the superfluity, cut or colour of their garments, or by their tonsure, give offence to the sight of the beholders. Const. 5 Zouche, A.D. 1347.

(21). Cyprian de Laps. c. 6, speaks of it as a crime in a confessor to deface his beard, c. 30 : It is written [Lev. XIX. 27] ye shall not mar the figure of your beard ; yet he plucks out his beard and dresses his hair. Clem. Alex. Paedag. III. 11 ; Stat. Eccl. Ant. A.D. 505, Can. 44, introducing the Roman court custom : Let no clergyman suffer his hair or beard to grow (nutriat). Apost. Const. 1, 3 : Do not permit the hair of the face to grow too long. Concil. Agath. A.D. 506, Can. 20 ap. Gratian I. Dist. XXIII. c. 22 : Let clerks who let their hair grow long be clipped by the archdeacon, even against their will. Concil. Barcinon. A.D. 540, Can. 3 : Let none of the clergy wear long hair (comam nutriat), nor shave (barbam radat). Concil. Brac. I. A.D. 56, *Ibid.* c. 32 : Nor ought clergy to let their hair grow long. Concil. Brac. II. A.D. 572, Can. 66 ; Gregory II. A.D. 731, *Ibid.* c. 23 : If one of the clergy let his hair grow long, let him be anathema. Egbert's Excerpt. 151, A.D. 740. Concil. Westminster A.D. 1175, Can. 4, orders clergy neglecting the tonsure to be clipped by the archdeacon. Concil. Ebor. A.D. 1195, Can. 10 : Let them who have no benefices be clipped by the archdeacons or [rural] deans. Const. 30 Langton, A.D. 1222, orders the clipping to extend to the officials of archdeacons. Const. 2 Stratford, A.D. 1343, censures those who neglect the tonsure.

(22). Edgar's Law 47, A.D. 960 : That no clerk cover his tonsure nor

was practised by penitents as a mark of affliction (23). In the third century it was adopted by monks in their endeavours after a life-long penance (24), and passed from the monks to the clergy in the fourth century, when it became known as the tonsure. The earlier tonsure, however, at least of the clergy, consisted in restraining the exuberance of hair and beard, not in shaving the pate (25); and the head thus clipped was formerly called the crown (26), and those who wore it the crowned ones (27).

7. In the sixth century the practice of shaving parts of the head so as to leave only a crown of growing hair had become general among the clergy, being probably also derived from the monks (28). Of this crown there were two forms: (1) the semi-

permit himself to be misshorn. Concil. Westminster A.D. 1102, Can. 12: That the crown of clergymen be visible.

(23). Lingard's Anglo-Saxon Church I. 54.

(24). Wihtraed's Dooms 8, A.D. 696: If a shorn man [*i.e.*, a monk] irregularly wander about, let entertainment be given him for one night but no longer, unless he have a license.

(25). Hieronym. in Ezekiel 13, vol. v. 547: It is clearly shown that we ought not to have shaven heads like the priests of Isis and Serapis, nor yet long-flowing hair like the barbarians and military men, but that the honest habit of presbyters may be manifested in their appearance. Optatus Milev. contra Parmen. Lib. II. p. 54: Where is the command to shave (radere) the head of priests, when on the contrary so many examples are forthcoming to show that it ought not to be done? Egbert's Excerpt. 151, A.D. 740: If any Catholic cut his hair after the manner of the barbarians, let him be deemed an alien from the Church of God.

(26). Hieronym. ap. Gratian Caus. XII. Qu. I. c. 7: The clergy are kings exercising kingship over themselves and others in good works. . . . And of this the crown on the head is a token. This crown they wear according to the custom of the Roman Church, as a sign of the kingdom which they expect in Jesus Christ. Concil. Ebor. A.D. 1195, Can. 10: We ordain that clergy who have received the crown from the bishop do preserve their crown and tonsure. If out of contempt they do not, let them be compelled to by deprivation of their benefices. Information of Hugo de St. Victor. ap. Maskell Mon. Rit. II. 237.

(27). Cod. Theodos. de Episc. et Cler. Leg. 38; Devoti Inst. Lib. I. Tit. I. § 11.

(28). Hallierus de Sacr. Elect. et Ordin. Pars. III. sec. 8, c. 9, vol. III. 518. Romae, 1740.

circular or crescent-shaped, in which the hair at the back was left uncut, so that there was only an incomplete crown—this form of the tonsure is said to have been first used in Ireland (29)—and (2) the circular or Roman tonsure, which consisted in shaving the pate of the head and cutting away the hair below, leaving a perfect circle of growing hair (30). The Roman form superseded the semicircular tonsure in Ireland in the seventh, and in this country in the eighth century (31).

8. All clergy are, moreover, required to wear a becoming clerical dress, as well in private life as in public ministrations. Since an early time in the Gallican and Eastern Church (32), and

(29). Gildas, A.D. 570, in Haddan & Stubbs I. 113: The Romans say that the tonsure of the Britons has its origin from Simon Magus, whose tonsure extended only to the anterior part of the head, from ear to ear. . . . Patrick's discourse alleges that the author of this tonsure was the swineherd of King Loigar, son of Neil. Concil. Tolet. A.D. 633. Can. 41, *Ibid.* II. 100, mentions a Spanish tonsure which consisted in shaving a moderate circle on the top of the head, and letting the lower part of the hair grow behind.

(30). Martin of Tours de Gloria Martyr. I. c. 28, states that St. Peter instituted the tonsure. Lynd. 64: The crown is a sign of a kingdom and perfection [see Hieronym. quoted note 26], and it is formed by shaving the hair on the top of the head, and cutting the hair away round the lower part, so as to expose the ears [Martin, A.D. 561, ap. Gratian I. Dist. XXIII. c. 32], leaving a circlet of hair, which is called the crown. This form of tonsure was not universal in England before A.D. 768. See Haddan and Stubbs I. 154. Const. 20 Boniface, A.D. 1261: That bishops in their synods, and archdeacons in their chapters, and chaplains of parochial churches do thrice every year denounce to all who would enjoy clerical privilege that they must be (1) decently clipped, and (2) have a shaven crown. . . . And let them not be ashamed to bear the marks of Him who, for their sakes, wore a crown of thorns. Const. 5 Othobon, A.D. 1268; Const. 21 Peckham, A.D. 1281: The crown is a distinguishing mark of a soldier of the Church. Decret. Lib. III. Tit. I. c. 7, and Lib. V. Tit. XXXIII. c. 27; Clem. Lib. III. Tit. I. c. 2; Lynd. 119.

(31). Gregor. Lib. I. Epist. 25; Lib. VII. Ep. 10: Let them clip their head all round, so that temporal cares, in as far as they are necessary, may stand out and forthwith be cut away when they become superfluous. H. and S. I. 108 state that the Roman tonsure was adopted in the south of Ireland in 630, in North Ireland in 704 A.D., and in this country in 768 A.D.

(32). Tertullian de Pallio says that the mantle (pallium) is a sign of

since the seventh century at Rome (33), this dress has been distinct from that of laymen. In other parts of the Church

the ascetics. Origen in Euseb. VI. 19 relates that, in A.D. 200, Heraclas, a presbyter of Alexandria who had before used a common dress, assumed the philosopher's mantle (pallium), and retains it even now. Socrates III. 24, relates that the philosophers under Jovian laid aside their mantles (pallia). Concil. Gangra, A.D. 355, Can. 12 ap. Gratian I. Dist. XXX. c. 15 : If any man thinks it in accordance with the holy vow (*i.e.*, of consecration) to wear a mantle (pallium, περιβόλαιον), as though he would thereby obtain sanctity, and despises or condemns others who wear with reverence shepherd's cloaks (ῥήροι, berrhae) and other common garments, let him be anathema. Socrates II. 43, says that Eustathius, Bishop of Sebaste, A.D. 359, wore the philosopher's mantle. Coelestin. A.D. 430, Ep. 4 ad Episc. Prov. Vienn. ap. Constantium, p. 1067, and Jaffé 369, blames the Gallican clergy for wearing a mantle and girdle, as being contrary to ecclesiastical [*sc.* Roman] use : "We must be distinct from the people in doctrine, not in dress (veste) ; in conversation, not in costume (habitu) ; in purity of mind, not in decoration (cultu) of the body." Salvianus de Gubernat. IV. c. 7, in the fifth century : Some of your sons, under the guise (sub titulo) of religion, act contrary to religion, and seem to have given up the world in dress (habitu) rather than in sentiment (sensu). Stat. Eccl. Ant. A.D. 505, Can. 45 ap. Gratian I. Dist. XLI. c. 8 : Let a clerk prove his profession by his walk and conduct, not seek honour from his garment and his shoes. Concil. Agath. A.D. 506, Can. 20 : Let no clerk wear garments or shoes except such as become religion. Concil. Matiscon. A.D. 581, Can. 5 ; Gregory of Tours, A.D. 594, Hist. Franc. V. 14 : Merovechus received the tonsure, and, his dress being changed for that which presbyters usually wear, was ordained. Concil. Trull. A.D. 692, ap. Gratian Caus. XXI. Qu. IV. c. 2 : Never let a clerk wear an unbecoming dress, whether dwelling at home or walking abroad, but wear a close-fitting outer garment (στολή), reaching to the ankles, such as is allowed to clerks, or else let him be suspended for a week. Duchêsne 366 ; Concil. Tolet. IV. A.D. 633, *Ibid.* Caus. XI. Qu. III. c. 65, speaks of the outer garment (planeta) and stole (orarium) as being the distinctive dress of a presbyter. The usual name for the outer garment in the Gallican Church was, according to Germanus, A.D. 555, casula or casulis ; the Roman name for it planeta ; the Greek στολή or φελόνιον. Leofric Missal, p. 215, speaks of a "stola sive planeta" being put on at the ordination of a presbyter. The term casula is first met with at Rome under the form quodsulis, in the life of Pope Stephen II. A.D. 732 (Lib. Pont. I. 443, I. 18), to describe a close-fitting garment or cassock. In Leofric Missal 261, collets are directed to wear black cassocks (casulae). *Ibid.* p. 258 : The clergy are directed to put on casulae and solemn vestments for the blessing of the chrism.

(33). The costume of all officials at Rome in the fifth century consisted

from an earlier date(34), and at Rome since the ninth century(35), the ordinary dress of the clergy has also been distinct from their liturgical dress. The ordinary dress is required to be dignified, but not ostentatious (36). For clergy in general it may be of any colour except red or green (37), and except purple according to

of (1) a tunic as an under-garment, either with sleeves, called linea, alba, στιχάριον, or without sleeves, called colobus or rochet (the colobus being required to be worn by senators, whenever seen out of doors, by Cod. Theod. XIV. X. 1), and (2) a cloak or mantle (paenula or planeta) as an upper garment. Hieronym. Ep. 130, ad Demetriad de Virg. A.D. 414, commends him for throwing aside "all care for the body . . . and clothing himself in a common tunic and common mantle." Magistrates when acting officially wore also the toga. Their apparitors wore the same dress, but had in addition (1) a girdle binding the frock in at the waist, and (2) a distinguishing scarf (pallium), which Duchêsne, 366, suggests may be the remains of the toga. Cotemporary paintings represent Pope Gregory and his father, Gordian, at the end of the sixth century, as wearing an identical dress. In the seventh century the planet had gone out of fashion for laymen, but it was still worn by all clergy, including collets and those below them, and all below the diaconate wore a girdle over the tunic. Gregory Dial. IV. c. 40, and Hom. IV. in Evang. I. c. 5.

(34). See *The Eucharist*, § 11, and Reichel's English Liturgical Vestments in the 13th century.

(35). Ordo S. Amandi, A.D. 800, ap. Duchêsne, speaks of the bishop putting on his sacerdotal vestments, and deacons and subdeacons putting on their albs and amices (anagolagia). Leo IV. A.D. 847, ap. Labbé VIII. 33: Let no one presume to sing masses in a planet which he wears every day. Can. 22 Elfric, A.D. 957: The priest shall have his mass-vestment. Edgar's Law 33, A.D. 960; Duchêsne 376.

(36). Pontius Vita Cypriani, c. 6, says: His dress was not out of harmony with his countenance, the pride of the world did not inflame him, nor did an affected penury make him sordid. Synod VII. ap. Gratian Caus. XXI. Qu. IV. c. 1, § 2: Of old every consecrated man was content with a moderate and cheap garment. All that is not for necessity but for show betrays pride, as great Basil saith. Can. 36 Elfric, A.D. 957: Let not your garment be too gorgeous, nor yet made in too sordid a manner.

(37). Concil. Lat. IV. A.D. 1215, Can. 16 in Decret. Lib. III. Tit. 1. c. 15, says of any colour except red or green. Const. 5 Othobon, A.D. 1268; Socrates VI. 22, relates that the Novatian Bishop Sisinnius always wore white, and when asked why he did not wear black, quoted Solomon's words, Let thy garments be white.

Gallican rule (38), but it should not be burnet, particoloured, or striped (39). Burnet is also forbidden to regulars (40). English constitutions direct presbyters to wear a close-cope or frock (tunica talaris or sacerdotalis), in imitation of that worn at Rome (41), in Church, consistory or before their prelates, which in length should reach to the ankles, or, at least, to the middle of the thigh (42); but, as Lyndwood remarks, these constitutions were never observed here (43). Canons and monks are enjoined to wear a cope or mantle of Eastern shape (44), such as was worn

(38). Duchêsne 366 relates that ordinarily the planets of Roman clergymen were purple or dark in colour. Concil. Narbon. A.D. 589, Can. 1: Let no clergyman wear purple garments which pertain to worldly ostentation.

(39). Syn. VII. A.D. 787, ap. Gratian Caus. XXI. Qu. IV. c. 1; Concil. Westminster A.D. 1102, Can. 10: That priests' clothes be all of one colour, and their shoes plain. Concil. Westminster A.D. 1138, Can. 15, forbids nuns to wear anything particoloured.

(40). Const. 36 Langton, A.D. 1222.

(41). John VI. A.D. 704, writing to the English bishops in H. & S. III. 264, says that all the English clergy had agreed on the vigil of St. Gregory to lay aside, not only the lay folding outer garment, but all the lay habit, and to wear long frocks (tunicas talares), after the Roman fashion. Egbert's Excerpt 153, A.D. 740, calls these colobia. Edgar's Law 46, A.D. 960; Zacharias, A.D. 743, ap. Gratian Caus. XXI. Qu. IV. c. 3, requires clergy not to wear secular garments, but a sacerdotal frock (tunica sacerdotalis), and never to be seen out of doors, except on a journey, without a cloak operimentum). Synod Eugenii. II. A.D. 826, *Ibid.* c. 4; Concil. Chelsea A.D. 787, Can. 4; Concil. London A.D. 1175, Can. 4 and 11; Const. 30 Langton, A.D. 1222: That archdeacons, deans, all parsons and dignitaries, rural deans and priests, go in a decent habit with a frock. Const. 14 Otho, A.D. 1237; Const. 5 Othobon, A.D. 1268: Let priests, deans, archdeacons, and all that have dignities with cure of souls, wear frocks, except, perchance, in their journeyings.

(42). Martin Brac. A.D. 561, ap. Gratian I. Dist. XXIII. c. 23, requires it to reach to the feet. Const. 36 Langton, A.D. 1222: Like Joseph's coat, reaching down to the ankles. Const. 14 Otho, A.D. 1237, requires it to be of decent length. Const. 5 Othobon, A.D. 1268: That no clerk wear garments ridiculous or remarkable for shortness, but reaching, at least, beyond the middle of the legs. Const. 5 Zouche, A.D. 1347; Const. 2 Bourchier, A.D. 1463, says, "long enough to cover their middle parts."

(43). Lynd. A.D. 1429, p. 119.

(44). Concil. Chelsea A.D. 787, Can. 4, says of Eastern pattern, probably

in the Gallican Church (45), but are forbidden to wear girdles or ornaments of silver and gold (46). Out of Church, canons may wear frocks with sleeves (47), but to all other clergy sleeves (48) are at all times interdicted, as well as furs (49). Their shoes also should neither ape the slippers (campagi) of the Roman clergy nor the beaked boots of worldly laymen (50). To graduates and prelates capes and short hoods are permitted (51), but not coifs, because they conceal the tonsure (52). For neglect of

referring to Syn. Trull. A.D. 692, ap. Gratian Caus. XXI. Qu. IV. c. 9, which requires all clergy to wear the gowns (stolas) customary for clergy. Concil. Tribur. A.D. 895, *Ibid.* Caus. XVII. Qu. IV. c. 25 : That priests do not go abroad except in gown (stola) and stole (orarium). Const. 30 Langton, A.D. 1222, calls it a habit.

(45). Theodori Poenit. II. II. 11, in H. & S. III. 192, calls it cappa, *i.e.*, cape or cope.

(46). Const. 36 Langton, A.D. 1222.

(47). Concil. Westminster A.D. 1200, Can. 10 : Let archdeacons and dignified priests use frocks with sleeves. Sleeves are, however, forbidden in Church by Concil. Lat. IV. A.D. 1215, quoted note 48, and by Const. 2 Stratford, A.D. 1343 : Clerks apparel themselves like soldiers, rather than like clerks, with long hanging sleeves not covering the elbows.

(48). Concil. Ebor. A.D. 1195, Can. 11 : That priests go not in copes with sleeves. Concil. Lat. IV. A.D. 1215, Can. 16, in Decret. Lib. III. Tit. I. c. 15 : Let clerks wear close upper garments, neither excessively short nor excessively long. Let them not use red or green material or sleeves. . . . Let them not wear copes with sleeves in Divine offices, in the Church or elsewhere, if they are beneficed priests, except they are disguising themselves for some just cause. The Gallican clergy wore sleeves (manicæ ἐπιμανίκια), like the Eastern clergy. Const. 2 Stratford, A.D. 1343.

(49). Const. 2 Bourchier, A.D. 1463 ; 11 Ed. III. c. 4, A.D. 1337, repealed by 1 Jac. I. c. 25, sec. 45.

(50). Stat. Eccl. Ant. A.D. 505, ap. Gratian I. Dist. XLI. c. 8 ; Gregory, A.D. 598, *Ibid.* I. Dist. XCIII. c. 21, censures the deacons of Catana for wearing the slippers, which were the prerogative of the Roman clergy (campagi). Concil. Aurel. 1, A.D. 511, Can. 20, forbids monks to wear pointed shoes (tsangae or zonæ). Const. 2 Bourchier, A.D. 1463 : Let none wear shoes monstrously long or turned up at the toes.

(51). Const. 2 Bourchier, A.D. 1463 : That no one who is not a graduate in some university, or possessed of some ecclesiastical dignity, do wear a cap with a cape, nor a double cap, nor a cap with a cornet, nor a short hood after the manner of prelates and graduates.

(52). Const. 5 Othobon, A.D. 1268 ; Const. 21 Peckham, A.D. 1281.

clerical dress clergy may be fined and deprived (53), but when travelling they are exempt from these rules (54).

9. All who have been admitted to any degree in order are further required to let their conduct and behaviour be such as becomes representative Christians, having a higher standard of life before them than Christians living in the world (55). Hence, in such matters as eating (56) and drinking (57), they

(53). Concil. Lat. II. A.D. 1139, Can. 4 ap. Gratian Caus. XXI. Qu. IV. c. 5 : If they refuse to amend [in the matter of dress] after monition, let them be deprived. Const. 14 Otho, A.D. 1237 ; Decret. Lib. V. Tit. XXXIX. c. 25 and 45 ; Const. 5 Othoboni, A.D. 1268, orders offending clerks to be suspended until they have paid a fine of one-sixth of the value of their benefices. Const. 21 Peckham, A.D. 1281, makes them liable to a fine without a previous monition. Const. 2 Stratford, A.D. 1342, increased the fine from one-sixth to one-fifth. 37 Ed. III. c. 13, A.D. 1363, determined the apparel of several sorts of clerks, but was repealed by 24 Hen. VIII. c. 13 and 1 Jac. I. c. 25. Const. 5 Zouche, A.D. 1347.

(54). Zacharias, A.D. 743, ap. Gratian Caus. XXI. Qu. IV. c. 3 ; Const. 5 Othoboni, A.D. 1268 ; Const. 21 Peckham, A.D. 1281 ; Const. 2 Stratford, A.D. 1343 ; Const. 2 Bourchier, A.D. 1347 ; Lynd. 119, 124.

(55). Isidor. ap. Gratian I. Dist. XXIII. c. 3 : Let them take care, withdrawn from public life, to abstain from the pleasures of the world ; not frequenting public games and shows, avoiding public feasts, and only attending private ones conducted with modesty and sobriety ; eschewing usury, the pursuit of base gains, and any approach to fraud. Let them put away the love of money as the root of all evil, lay aside secular offices and business, not be ambitious for degrees of honour, nor take gifts for dispensing the medicine of God. Let them avoid deceit and conspiracy, hatred, strife, evil-speaking, and envy, not permitting the eyes to wander, the tongue to run riot, or the deportment to be supercilious or mincing, but by a simple gait and walk show the modesty and simplicity of their mind. Let them altogether execrate obscenity as well of language as of deed, avoid the society of widows and maidens, altogether eschew familiarity with strange women, and either seek to preserve the chastity of a body undefiled, or else submit to the bond of a single marriage. Let them also show respect to their seniors, and not exalt themselves by any vain-glorious pursuit, and devote themselves regularly to readings, psalms, hymns, spiritual songs, and the exercise of doctrine.

(56). Hieronym. ap. Gratian I. Dist. XXXV. c. 4 ; Ambros. *Ibid.* c. 8 ; Augustin *Ibid.* Dist. XLI. c. 1–4, and Dist. XLIV. 1 ; Gregory, *Ibid.* c. 5 ; Chrysostom de Sacerd. V. c. 3.

(57). Apost. Can. 43 ap. Gratian I. Dist. XXXV. c. 1 : Let a bishop,

should observe moderation, and always say grace before and after meat (58). They should not frequent taverns (59), markets or fairs, shows or public games (60), or gossip about in the streets (61). They should avoid strife (62) and litigation in

presbyter, or deacon, who indulges in dice or drinking, either leave it off or be deprived. Hieronym. *Ibid.* c. 3; Concil. Agath. Can. 41, A.D. 506, *Ibid.* c. 9, orders a clerk to be suspended thirty days for drunkenness. Concil. Clovesho A.D. 747, Can. 21: That monastics and ecclesiastics do not follow nor affect the sin of drunkenness. Cap. 14 Hincmar, A.D. 852, *Ibid.* I. Dist. XLIV. c. 7; *Id. Ibid.* c. 9, forbids more than three cups of wine. Can. 29 Elfric, A.D. 957: That no priest sottishly drink to intemperance. Edgar's Law 57, A.D. 960: That priests guard themselves against over-drinking. Cap. 13 Theodulf, A.D. 994: It concerns every mass-priest to guard himself against drunkenness. Concil. Westminster A.D. 1102, Can. 2: That presbyters go not to drinking-bouts nor drink to pegs. Concil. London A.D. 1175, Can. 2: Let not clerks go to eat and drink in taverns, nor be present at drinking-bouts, unless in their travels, repeating Concil. Carthag. III. A.D. 397, Can. 27; Concil. Ebor. A.D. 1195, Can. 18; Const. 6 Edmund, A.D. 1236; Decret. Lib. v. Tit. l. c. 12.

(58). Concil. Brac. II. A.D. 572, Can. 65 ap. Gratian I. Dist. XLIV. c. 12: Nor ought clerks to go to meat (edere panem) before the third day hour, nor without first having sung a hymn, and after meat they ought to give thanks to God, the Giver. Hincmar, A.D. 852, *Ibid.* c. 8: When the presbyters have assembled for any repast, let some senior among them say a verse before meat and bless the food. . . . And after meat, let them say a hymn, after our Lord's example. Egbert's Excerpt. 108, A.D. 740.

(59). Apost. Can. 42, quoted above; Concil. Laodic. A.D. 363, Can. 24 ap. Gratian I. Dist. XLIV. c. 2; Concil. Carthag. III. A.D. 397, Can. 27, *Ibid.* c. 4; Syn. Trull. A.D. 692, Can 9, *Ibid.* c. 3; Can. 30 Elfric, A.D. 957; Concil. Westminster A.D. 1200, Can. 10: That clerks go not to taverns or drinking-bouts.

(60). Concil. Laodic. A.D. 363, Can. 54 ap. Gratian III. Dist. V. c. 37; Augustin *Ibid.* I. Dist. LXXXVI. c. 8; Isidor. *Ibid.* I. Dist. XXIII. c. 3; Concil. Brac. II. A.D. 572, Can. 60; Const. 5 Winchel. A.D. 1305: They shall not keep taverns, shows, stews, or unlawful games.

(61). Stat. Eccl. Ant. Can. 47, A.D. 505; Concil. Narbon. A.D. 589, Can. 3.

(62). Concil. Carthag. III. Can. 9, A.D. 397, ap. Gratian Caus. XI. Qu. I. c. 43; Stat. Eccl. Ant. Can. 59, *Ibid.* I. Dist. XC. c. 1 and 7; Gregory *Ibid.* I. Dist. LXXXVIII. c. 4, forbids bishops to plead like laymen.

secular courts (63), usury (64), singularity (65), above all things idleness as the fiend of the soul (66), and maintain themselves honestly by agriculture (67) or a handicraft (68), or by writing and teaching (69). All orders are, moreover, required to be kept distinct, and no two may be exercised simultaneously by one and the same person (70).

### The Duties of those in Holy Orders.

10. In addition to the general duties incumbent on all clergy, those in holy orders are under three special obligations: (1) in respect of worship, (2) in respect of business and trade, and (3) in respect of marriage. These obligations, it has been some-

(63). See above, note 12.

(64). Concil. Elib. A.D. 305, Can. 20: If any one of the clergy be found to receive usury, let him be deprived and excommunicated. Concil. Arelat. A.D. 314, Can. 12; Can. Apost. 44 ap. Gratian I. Dist. XLVII. c. 1; Concil. Nic. A.D. 325, Can. 17; Concil. Laodic. A.D. 363, *Ibid.* I. Dist. XLVI. c. 9: Ministers of the altar may not be usurers. Leo, A.D. 443. *Ibid.* c. 10, forbids clergy to practise usury in the name of another. Concil. 1 Turon. Can. 13; Concil. Tarracon. Can. 13; Concil. Araus. III. Can. 27; Gregory *Ibid.* c. 3; Isidor. *Ibid.* I. Dist. XXIII. c. 3; Elfric's Can. 30, A.D. 957; Edgar's Law 14, A.D. 960; Concil. London A.D. 1126, Can. 14: We forbid all usury and filthy lucre to all clerks. Concil. Westminster A.D. 1138, Can. 9: We lay under sentence of deprivation those clerks who are usurers, follow filthy lucre, or do public business for secular men. See *Order*, note 291.

(65). Augustin ap. Gratian I. Dist. XLI. c. 1 says that he ought to adapt his manner of living to the manners of those among whom he lives. Lynd. 124, 208.

(66). Cap. 3 Theodulf, A.D. 994.

(67). Socrates I. 12 relates that Spyridon, who was a shepherd, continued to feed his sheep after being made a bishop in Cyprus. Stat. Eccl. Ant. Can. 52 and 49 ap. Gratian I. Dist. XCI. c. 3, 4: Let a clerk provide himself with food and raiment by a handicraft or agriculture. Let all clergy who are capable of work learn a handicraft and letters. Sozom. VII. 28 mentions a clerical weaver at Maiuma. Edgar's Law 14, A.D. 960: That every priest do justly cultivate his land, and be not an unrighteous chapman nor a covetous merchant. Decret. Lib. III. Tit. l. c. 1; Lynd. 68.

(68). Edgar's Law 11, A.D. 960: That every priest do teach manual arts with diligence. Cap. 3 Theodulf, A.D. 994; Lynd. 280.

(69). Stat. Eccl. Ant. Can. 53 ap. Gratian I. Dist. XCI. c. 4; Lynd. 280.

(70). Gregory ap. Gratian I. Dist. LXXXIX. c. 1.

times said, are a legacy derived from the monks, without which, the clergy would have forfeited their place in public esteem (71), but it may be said with greater truth that they are an inheritance from the earliest days of the Church, when they were obligations incumbent upon all Christians and had not as yet been relaxed for those living in the world under the withering influence of prosperity.

11. Those who are in holy orders are required to assist at all the public offices of the Church, the lesser (72) as well as the greater hour-services, where these have been introduced, unless they are sick, blind, or live too far away, or are otherwise reasonably hindered (73). Those who cannot publicly join in the services should say them privately, and should either privately consecrate (conficere) or publicly offer (offerre) the Eucharist every Sunday and high day (74). Those who hold any spiritual benefice are under the same obligation, even

(71). Duchêsne 436.

(72). Isidor. de Offic. I. 19, l. c: Terce, sext, and nones. Vespers, matins, and lauds are the preliminary parts of the Eucharistic service.

(73). Concil. Tolet. I. A.D. 400, Can. 5 ap. Gratian I. Dist. XCII. c. 9: A presbyter, deacon, or subdeacon, if he is within the city, or in any place where there is a church, be it castle, hamlet, or lordship, who does not come to Church for the daily office of singing in the morning and at vespertide, let him not be deemed a cleric, *i.e.*, if when reproved he declines to deserve pardon from his bishop by means of satisfaction. Concil. Venet. A.D. 465, Can. 14: Let a clergyman who, being within the city, is absent from the morning hymns without reasonable cause, be excluded from communion for seven days. Concil. Aurel. I. A.D. 511, *Ibid.* I. Dist. XCI. c. 5, directs such to be punished according to the bishop's discretion. Pelagius, A.D. 555, *Ibid.* c. 1; Concil. Martini A.D. 572, Can. 63; Concil. Agath. A.D. 506, in Decret. Lib. III. Tit. XLI. c. 1; Concil. Nannet. A.D. 890, ap. Gratian I. Dist. XCI. c. 2, directs clergy to be present at all the seven hours. Laws 38, Northumbrian priests, A.D. 950: If a priest do not observe the yearly order in the Church services by day or by night, let him make satisfaction. Liguori Lib. IV. no. 154, and Craisson, § 5114, discuss what may be considered sufficient reasons. Can. 19 Elfric, A.D. 957: Let mass-priests sing in their churches the seven tide-songs that are appointed them. Concil. Lat. IV. A.D. 1215, in Decret. l. c. c. 9, requires them to attend the day hours and also the night office. Const. 4 Winch. A.D. 1205.

(74). Concil. Martini A.D. 572, Can. 64; Concil. Lat. IV. l. c.

although they have not yet been advanced to holy orders (75). Formerly, in the Gallican Church, those who were absent three Sundays from the solemn service without good cause were ordered to be suspended for three years (76).

12. To enable them to fulfil these duties with less liability to interruption, they are required to abstain altogether from secular business (77), trade (78), and executorships (79); from hunting (80), hawking, or gambling (81); from feasting with

(75). Concil. Basil A.D. 1433, Sess. 21, says beneficiati seu in sacris constituti ad horas tenentur, folowing Concil. Lat. IV. l. c. c. 9; Craisson, § 5085.

(76). Concil. Agath. A.D. 506, Can. 64 ap. Gratian Caus. VII. Qu. l. c. 29.

(77). Apost. Can. 7 ap. Gratian I. Dist. LXXXVIII. c. 3: Let not a bishop, presbyter, or deacon undertake the cares of this world; if he do, let him be deprived. Concil. Elib. A.D. 305, Can. 19: Let not bishops, presbyters, and deacons go from their places for the sake of trading, nor frequent markets for gain. Concil. Carthag. I. A.D. 348, Can. 6 ap. Gratian Caus. XXI. Qu. III. c. 1; Concil. Carthag. III. Can. 15, *Ibid.* c. 3: Let neithe bishops, presbyters, nor other clergy act as farmers or proctors, or obtain a livelihood in any dishonest way, because it is written, No one can serve God and be mixed up with secular affairs. Cyprian *Ibid.* c. 4–7; Concil. Chalcedon Can. 3 ap. Gratian I. Dist. LXXXVI. c. 26: Let no one for the future, be he bishop, clerk, or monk, hire possessions or undertake business, or intrude himself into worldly ministrations. Gelasius, A.D. 494, *Ibid.* I. Dist. LXXXVIII. c. 2; Concil. Tarracon. A.D. 517, Can. 2: Whoever would be in the clergy let him not follow the pursuit of buying cheap and selling dear. Concil Clovesho A.D. 747, Can. 8; Decret. Lib. I. Tit. XIX. and Lib. III. Tit. L.; Const. 8 Langton, A.D. 1222.

(78). Hieronym. ap. Gratian I. Dist. LXXXVIII. c. 9: Avoid as the plague a clerical trader, one who is rich instead of poor, courted instead of looked down on. Augustin *Ibid.* c. 10: Trading is sometimes allowed, sometimes not allowed. Before any one is an ecclesiastic he may trade, afterwards he may not. Gregory *Ibid.* c. 4, and Caus. XIV. Qu. III. IV. V.; Elfric's Can. 30, A.D. 957: Let no priest be a trader. . . . Edgar's Law 14, A.D. 960; Concil. London A.D. 1175, Can. 10. So 1 & 2 Vict. c. 106, sec. 29, forbids trading, and limits farming to 80 acres.

(79). Cyprian Ep. 65 ap. Gratian I. Dist. LXXXVIII. c. 14, and Caus. XXI. Qu. III. c. 4; Concil. Chalcedon A.D. 451, Can. 7; Stat. Eccl. Ant. A.D. 505, Can. 18, *Ibid.* c. 5; Const. 15 Boniface, A.D. 1261.

(80). Can. Apost. 43 ap. Gratian I. Dist. XXXV. c. 1; Edgar's Law 64, A.D. 960.

(81). Hieronym. ap. Gratian I. Dist. LXXXVI. c. 8; Concil. Epaon. A.D. 517, Can. 4; Concil. Agath. A.D. 506, Can. 55; Concil. Aurel. IV. A.D. 517, *Ibid.* I. Dist. XXXIV. c. 2, and Decret. Lib. V. Tit. XXIV. c. 1; Synod.

Jews (82) or those of ill repute (83), and from riotous wedding (84) or corse feasts (85). They are bidden, moreover, to be hospitable and kind to the poor (86), quiet in behaviour (87), and the associates of good men (88); not seeking to make a profit out of their ecclesiastical position (89), but to advance Christianity by word and example (90), and to put down heathenism, witchcraft, sorcery, and magic (91). In return they are entitled to be maintained by the Church (92), unless they have private means of their own (93).

Bonifac. *Ibid.* c. 3: To all the servants of God we forbid hunting and scouring the forest with dogs, or keeping hawks or falcons. Edgar's Law 64, A.D. 960: That no priest be a hunter.

(82). Concil. Venet. A.D. 465, Can. 12.

(83). Cap. 13 Theodulf, A.D. 994.

(84). Concil. Venet. Can. 11; Concil. Agath. A.D. 506, Can. 39 ap. Gratian I. Dist. XXXIV. c. 19: Etiam alienarum nuptiarum evitent convivia.

(85). Apost. Const. VIII. 44, and Hincmar's Cap. 14, A.D. 852, ap. Gratian I. Dist. XLII. c. 7, forbids presbyters to get drunk in celebrating trentals. Elfric's Can. 36, A.D. 957: Ye ought not to make merry over dead men, nor to hunt after a corpse. Const. 10 Stratford, A.D. 1343.

(86). Stat. Eccl. Ant. Can. 15, A.D. 505, ap. Gratian I. Dist. XLI. c. 7: Let a bishop keep a place for hospitality near to his church. Chrysostom *Ibid.* I. Dist. XLII. c. 2: In exercising hospitality there must be no distinction of persons. Egbert's Excerpt 26, A.D. 740.

(87). Stat. Eccl. Ant. Can. 59, A.D. 398, ap. Gratian I. Dist. XC. c. 1: Let a bishop, either by remonstrance or authority, bring unquiet clergy to agree. Can. 25, *Ibid.* c. 6: Let the synod reconcile quarrelsome bishops if the fear of God will not. Cyprian *Ibid.* c. 3.

(88). Cap. 13 Theodulf, A.D. 994: If any worthy father of a family invite you to his house, . . . then it is proper that you visit him with civility of mind and treat him with spiritual instruction who entertains you with the good things of this world.

(89). Gratian Caus. XII. Qu. III. and IV.

(90). Edgar's Law 52, A.D. 960: Priests ought always to give people a good example. Cap. 21 Theodulf, A.D. 994.

(91). Edgar's Law 16, A.D. 960; Cnut's Law 5, A.D. 1018; Concil. London A.D. 1126, Can. 15.

(92). Cyprian Ep. 33 (Oxf. 39), 5: I have purposed the honour of the presbytery for them . . . that they may share the monthly divisions. Ep. 65, 1; Concil. Antioch. A.D. 341, Can. 25; Concil. Martini ap. Gratian Caus. X. Qu. II. c. 7; Innocent III. in Decret. Lib. III. Tit. V. c. 16.

(93). Innocent III. l. c. c. 23.

13. In regard to marriage the mind of the Church has ever been this, that as St. Paul required the use of wedlock to be forborne for extraordinary devotions, so those who have given themselves to a life of devotion for the sake of others should as far as possible forbear from it altogether (94). In applying this rule to the circumstances of particular nations and countries considerable difference of practice exists, but married bishops, presbyters, or deacons appear to have been the exception rather than the rule in early times (95).

14. The Western and the Eastern Church alike agree in forbidding the marriage of bishops and presbyters after ordination (96), and of deacons also, unless before being ordained they give notice of their intention to marry (97). At the instance of

(94). 1 Cor. VII. This is mentioned as Clement's view by Eusebius III. 30. Dionysius to Basilides, A.D. 260, Can. 3: It is proper for them to abstain from each other by consent. Concil. Carthag. II. A.D. 390, Can. 2 ap. Gratian I. Dist. XXXI. c. 3: Bishops, presbyters, and deacons, as becomes the priests of God and all who wait on the Divine sacraments, should be continent in all things. Concil. Carthag. V. A.D. 401, Can. 3: It is ruled that bishops, presbyters, and deacons do abstain from their wives or otherwise be removed from their ecclesiastical office. Other clergy are not bound so to do, but to conform each to the rule of his own church. Concil. Telept. A.D. 418, Can. 9; Baeda *Ibid.* c. 2: Presbyters, that they may always assist at the altar, must always abstain from their wives.

(95). See letter condemning Paul of Samosata, A.D. 270, in Euseb. VII. 30. Tertullian ad Uxor. I. 7: Priesthood is a function of widowhood and of celibacies among the nations. On the other hand Socrates, V. 22, says, that in the East it is at the discretion of all clergy whether to abstain from their wives or not.

(96). Hippol. Haer. IX. 7, says, A.D. 222: If any one in holy orders were to get married [the heretic Calixtus] permitted such a one to continue in holy orders as if he had not sinned. Apost. Const. VI. 17: A bishop, a presbyter, and a deacon, when they are constituted, must be but once married, whether their wives be alive or whether they be dead. It is not lawful for them if they be then married to marry a second time. Concil. Neocaesar. A.D. 314, Can. 1 ap. Gratian I. Dist. XXVIII. c. 9: Let a presbyter who marries a wife be deposed from his order. Socrates II. 26; Concil. Carthag. II. A.D. 390, ap. Gratian I. Dist. LXXXIV. c. 3; Theodori Poenit. I. IX. 4, in H. & S. III. 185: If a presbyter or deacon take a strange woman to wife with the cognisance of the people, let him be deprived.

(97). Concil. Ancyr. Can. 10, A.D. 314, ap. Gratian I. Dist. XXVIII. c. 8.

Paphnutius the synod of Nicaea, in 325 A.D., refused to impose continence on such as were already married (98), and to that decision the Eastern Church still adheres. To all below the diaconate (99) marriage was formerly everywhere permitted, and in some places even marriage with a widow (100), provided those who contracted it were not under a vow of continence (101); but since the seventh century marriage is only permitted to those who have not as yet been advanced to the subdiaconate (102).

(98). Gratian I. Dist. XXXI. c. 12; Socrates I. 11: It seemed desirable to the bishops to introduce a new [*i.e.*, to the Easterns] law into the Church, that those who were in holy orders—I speak of bishops, presbyters, and deacons [Gratian adds subdeacons]—should have no conjugal relations with their wives whom they married prior to their ordination. . . . Paphnutius earnestly entreated them not to impose so heavy a yoke. . . . It would be sufficient, he thought, that such as had previously entered on their sacred calling should abjure matrimony, according to the ancient tradition of the Church, but that none should be separated from her to whom, while yet unordained, he had been legally united.

(99). Gregory, A.D. 594, ap. Gratian I. Dist. XXXII. c. 2; Concil. Tolet. IV. Can. 27, A.D. 633, *Ibid.* I. Dist. XXVIII. c. 3: Whenever presbyters and deacons are appointed throughout the administrative districts (dioceses), they ought first solemnly to promise the bishop that they well observe continence. Concil. Arelat. II. A.D. 461, Can. 2, *Ibid.* c. 6 and 7; Egbert's Excerpt. 159, A.D. 740.

(100). Martin, A.D. 572, ap. Gratian I. Dist. XXXIV. c. 18: If a reader have married a widow, let him remain in his readership, or if it be necessary be promoted to the subdiaconate, but not beyond.

(101), Leo IX. A.D. 1054, ap. Gratian I. Dist. XXXII. c. 14: Among clergy the Church permits only doorkeepers, readers, exorcists and collets to marry a virgin wife with the priest's blessing, if they are found free from the vow and habit of a monk, and refuse to profess continence. Elfric Can. 8, A.D. 957: That he who marries a widow or divorced wife, or he that marries a second time, be never admitted afterwards to any order.

(102). Leo, A.D. 446, ap. Gratian I. Dist. XXXII. c. 1; Gregory, A.D. 601, *Ibid.* c. 3, says those below holy orders may marry, Ep. I. 45 (Migne. LXXVII. 506). He afterwards, Epist. IV. 36 (Migne, p. 710), required them to separate from their wives, and to cease to minister. Synod Trull. A.D. 692, Can. 6, *Ibid.* c. 7: If any one of those who join the clergy wishes to be united to a woman in the nuptial bond, let this be done before he reaches the order of subdeacon. Leo IX. A.D. 1054, *Ibid.* c. 14, quoted note 101. Concil. London A.D. 1175, Can. 1, Decret. Lib. III. Tit. III.

In Africa, Spain, and Gaul clerks were, however, required, when they entered the clerical life and became readers, to make their choice whether they would marry or whether they would profess continence (103).

15. It is also the rule, both of the Eastern and the Western Church, not to promote married clergy into the higher degrees of holy orders (104). The Roman, the African, and the Gallican Churches not only forbid bishops, presbyters, deacons, and subdeacons to marry after ordination, but also require such as are married to refrain from living with their wives (105), excepting

(103). Concil. Carthag. III. A.D. 397, Can. 19 ap. Gratian I. Dist. XXXII c. 8: Let readers, when they come to years of maturity, be compelled either to marry or to profess continence. Concil. Tolet. II. A.D. 531, Can. 1, *Ibid.* I. Dist. XXVIII. c. 5, quoted under *Order*, note 274, requires them to be publicly interrogated whether they propose to marry or to profess continence. Egbert's Excerpt. 113, A.D. 740: Let young men, when they come to the age of puberty, either marry or profess continence.

(104). Concil. Taurin. A.D. 401, Can. 8: That those who have begotten children in their ministry be not advanced to any higher order. Concil. Araus. A.D. 441, Can. 24; Concil. Arelat. II. A.D. 443, Can. 2 ap. Gratian I. Dist. XXVIII. c. 6: One who is in the bond of wedlock ought not to b assumed into the presbyterate, unless he first profess conversion [*i.e.*, the monastic life]. Pelagius *Ibid.* c. 13, and Gregory *Ibid.* c. 4, object to a married man being promoted to the episcopate.

(105). Concil. Arelat. II. Can. 43 ap. Gratian I. Dist. XXVIII. c. 7, forbids deacons to be ordained unless they first promise conversion [*i.e.*, a monastic rule]. Gregory *Ibid.* c. 1, says the same as to subdeacons. Concil. Elib. A.D. 305, Can. 33: Bishops, presbyters, and deacons, and all discharging ministerial offices, are to abstain from their wives and not beget children, or otherwise to be deposed from the honour of clergy. Concil. Carthag. II. A.D. 390, Can. 2 ap. Gratian I. Dist. LXXXIV. c. 3: It is unanimously decreed that bishops, presbyters, and deacons, and those who handle the sacraments, abstain from their wives. It is decreed that in all degrees continence be observed by all who wait on the altar. Concil. Carthag. V. Can. 3, A.D. 401, *Ibid.* I. Dist. XXXII. c. 13: It is decreed that bishops, presbyters, and deacons, in accordance with earlier canons, abstain from their wives or be removed from office. Concil. Araus. A.D. 441, Can. 23; Concil. Gerund. A.D. 517, Can. 6; Concil. Arvern. A.D. 535, Can. 13; Gregory *Ibid.* c. 2, 9, 11, 18; Concil. Turon. II. A.D. 567, Can. 10 and 12; Concil. Autissiodor. A.D. 578, Can. 21; Concil. Matiscon. A.D. 581, Can. 3: Let no woman

unattached rural clergy living isolatedly in castles or hamlets, who, therefore, would consecrate the Eucharist only at distant intervals (106). When in the eleventh century castles and hamlets came to be constituted cures of souls, many canons were passed to include the non-collegiate as well as the capitular clergy in the rule of continence (107), but these canons were in this country

enter the bishop's bedroom unless two presbyters or deacons are present. Concil. Lugdun. III. A.D. 583, Can. 1; Dunstan, Can. 40, A.D. 963: If a mass-priest had a lawful wife before he was ordained, and dismisses her and takes orders, and then comes together with her again, let every one of them fast as for murder.

(106). Concil. Tolet. I. Can. 7, A.D. 400, ap. Gratian Caus. XXXIII. Qu. II. c. 10, after mentioning, in Can. 5, churches in castello, vicu et villa, makes provision for the wives of priests falling into grave sin. Gregory to Augustin, A.D. 601, in Baeda I. 27, mentions isolated secular clergy, "not received into holy orders," whom he allows to retain their wives. Egbert's Excerpt. 159, A.D. 740: If there be any vulgar clerks not in holy orders, *i.e.*, who are neither presbyters nor deacons, that cannot contain themselves, they ought to have wives, and to receive their stipends apart from the rest. Law 35, Northumbrian priests, A.D. 950, possibly referring to a Church: If a presbyter dismiss one wife and take another, let him be anathema. Concil. Winton, A.D. 1076, Can. 1: That no canon have a wife. That such presbyters as live in castles and villages [Conf. Gratian I. Dist. LXXX. c. 3, *i.e.*, rural as distinguished from collegiate and chapter clergy] be not forced to dismiss wives if they have them, but such as have not are forbidden to have any. For the future let bishops take care to ordain no man, presbyter or deacon, unless he first profess that he hath no wife.

(107). Alexander II. A.D. 1065, ap. Gratian I. Dist. LXXXI. c. 16; Urban II. A.D. 1089, *Ibid.* I. Dist. XXXII. c. 10: Those who after the subdiaconate wish to devote themselves to their wives, we remove from every sacred order and deprive of office and benefice. Concil. Westminster, A.D. 1102, Can. 4: That no archdeacon, presbyter, deacon, or canon marry a wife or retain her if he be married. That every subdeacon be under the same law, though he be not a canon, if he had married a wife after he made profession of chastity. Concil. London A.D. 1108, Can. 9: Presbyters who choose to leave their women and to serve God and His holy altars shall have vicars to officiate for them during the forty days in which they are to desist from their office. Concil. Rem. A.D. 1119, Can. 5, and Concil. Lat. I. A.D. 1123, Can. 21, *Ibid.* I. Dist. XXVII. c. 8: We altogether forbid presbyters, deacons, subdeacons, and monks to have concubines or to contract marriage. We judge that marriages contracted by such persons should be dissolved, and themselves reduced to penance, according to the

largely evaded. And since continence is not obligatory by Divine rule, except when ministering at the altar (108), diversities of circumstances justify, within certain limits, diversity of practice in relation thereto (109).

16. In this country not only is marriage now allowed to all the clergy, collegiate as well as rural, by custom based upon secular legislation (110), but the custom has extended to bishops as well as to presbyters and deacons, and their marriage, and even their remarriage, is tolerated after as well as before ordination, for which there is no precedent elsewhere. Such toleration cannot, however, exempt them from observing the canonical rule which

determinations of the holy canons. Concil. Westminster, A.D. 1127, Can. 5 ; Concil. Lat. II. A.D. 1139, Can. 6 ap. Gratian I. Dist. XXVIII. c. 2 : Those who, being in the order of the subdiaconate or any higher order, have married wives or keep concubines, we order to be deprived of office and benefice. Can. 7, *Ibid.* Caus. XXVII. Qu. I. c. 40 : We order that bishops, presbyters, deacons, subdeacons, regular canons, monks, and converted persons professed, who, transgressing the holy canons, have presumed to take wives to themselves, be separated. Alexander III. in Decret. Lib. IV. Tit. VI. c. 2, declares the marriage of a subdeacon a nullity. Concil. London, A.D. 1175, Can. 1 : If any presbyter or beneficed clerk publicly keeps a woman and does not dismiss her upon a third admonition, let him be deprived. Any under subdeacons must keep their wives if they are married . . . but they are not to be beneficed if they live with their wives. Concil. Lat. IV. A.D. 1215, Can. 14 in Decret. Lib. III. Tit. I. c. 13 ; Const. 3 and 4 Edmund, A.D. 1236 ; Const. 16 Otho, A.D. 1237 : We charge that where clerks in holy orders keep women publicly in their houses or churches, they do wholly discard them within a month. Const. 8 Othobon, A.D. 1268, gives archdeacons power to enforce the canons, also Const. 5 Peckham A.D. 1279 ; Lynd. 44.

(108). Decret. Joan. XXII. Tit. VI.

(109). Theodore ap. Gratian I. Dist. XXIX. c. 2 : The rules of the saints must be regulated according to the diversities of circumstances. Accordingly Nicolaus, A.D. 866, ap. Gratian I. Dist. XXVIII. c. 7, refused to depose a married priest. Concil. Lat. IV. Can. 14, A.D. 1215, in Decret. Lib. III. Tit. I. c. 13, speaks of some "who, according to the custom of their locality have not abandoned the conjugal tie."

(110). 2 and 3 Ed. VI. c. 21, and 5 and 6 Ed. VI. c. 12, A.D. 1552, made such marriages good in law. The permission was made perpetual by 1 Jac. I. c. 25, sec. 50.

requires conjugal abstinence from all who offer the Lord's oblation (111), nor does the general dispensation to marry exonerate them from the rules as to persons they are forbidden to marry (112). To avoid scandal, women are not allowed to dwell under the roof of the unmarried clergy, except a mother, a sister, an aunt, or some other person above suspicion (113).

(111). Siricius, A.D. 385, ap. Gratian I. Dist. LXXXII. c. 3; Innocent, A.D. 405, *Ibid.* c. 2: Nor is it right that they should be admitted to sacred offices who exercise carnal intercourse with a wife, because it is written: Be ye holy, even as I am holy. Concil. Telept. A.D. 418, Can. 9: We persuade also what is worthy, chaste, and honest, that presbyters and deacons do not live with their wives, because daily calls are made upon them in their ministry. Syn. Trull. A.D. 692, Can. 13 ap. Gratian I. Dist. XXXI. c. 13, § 1: Those who minister at the altar ought at the time of the oblation of the holy things, to be continent in all things, that they may obtain from God what they ask in simplicity. Concil. Clovesho. A.D. 747, Can. 22, requires presbyters to keep themselves ready to communicate. Elfric. Can. 7, A.D. 957: The bishop under the old law might marry an uncorrupted maid, and might use her at set times, because one only family could be of that order, and that always, and he must marry but once, and then not a widow or divorced wife but a maid; and they might well have a wife in those days, for then they never celebrated mass nor houseled men. Theodori Poenit. A.D. 673, II. XII. 1, in H. & S. III. 199: Those who are in the married state should practise continence for three nights before communicating. See *The Eucharist*, note 270.

(112). See order, § 47, notes 298–300. Athenagoras, Plea for the Christians, c. 33, A.D. 177: A second marriage is only a specious adultery.

(113). Ramsay, The Church under the Roman Empire, has shown that in Asia Minor women held an advanced position, very different from their position elsewhere. Yet in this locality the synod which condemned Paul of Samosata, A.D. 270 (in Euseb VII. 30), charges him with having employed women to sing, and adds: It was a duty to avoid at least the suspicion growing out of the introduction of adopted sisters. Concil. Nic. Can. 3 ap. Gratian I. Dist. XXXII. c. 16: The great synod strictly forbids bishops, presbyters, deacons, and all clerks to retain any woman in their houses, but only a mother, sister, aunt, or other person above suspicion. Concil. Carthag. III. A.D. 397, ap. Gratian I. Dist. LXXXI. c. 27; Siricius, A.D. 385, *Ibid.* I. Dist. LXXX. c. 31; Gelasius, *Ibid.* I. Dist. LXXXI. c. 23–25; Syn. VII. A.D. 787, *Ibid.* c. 26; Can. 5 Elfric, A.D. 957; Concil. Ilerd. A.D. 523, Can. 15, directs clergy familiar with strange women who, after two warnings, neglect amendment, to be deprived so long as they continue in vice, but to be restored after correction.

## The Particular Duties of the Several Degrees in Order.

### The Presbyterate.

17. The particular duties of the presbyterate as the highest degree in the ranks of order are twofold. 1 Towards the world presbyters are in a special sense representatives of Christ, because they represent to it His Body, the Church. Hence they are said to be the salt of the earth and the light of the world (114). 2 Towards the Church they are also representatives of Christ (115), in that as His ambassadors they discharge for it (1) mediatorial or intercessory, (2) magisterial or teaching, and (3) pastoral or governing duties. Hence they are also called the hands of the great High Priest, and their duties are said to be to preside, to consecrate the Body of Christ, and to preach (116). The fulfilment of these duties properly rests with them collectively, as joint-partakers in one undivided office, but the distribution of the duties of office among themselves is a matter of local arrangement (117).

(114). Tit. I. 9; Pseudo-Ambros. de Dign. Sac. I. 6; Hieronym. ap. Gratian, Caus. II. Qu. VII. c. 29, and 1 Dist. XCIII. c. 7; Concil. Turon. A.D. 460, Can. 7; Alcuin to Ethelhard in H. & S. III. 476.

(115). Luke X. 16: He that heareth you heareth Me. Polycarp ad Phil. c. 5, A.D. 112: Obey the presbyters and deacons as God and Christ.

(116). Concil. Ancyr. A.D. 314, Can 1, defines the duties of presbyters as (1) offering, (2) teaching, and (3) partaking of the honour of the chair, *i.e.*, governing. *Id.* ap. Gratian I. Dist. l. c. 32 forbids a lapsed presbyter (1) to offer, (2) to preach, or (3) to do any other priestly office. The pagan Lucian describes Peregrinus as (1) an instructor (*προφήτης*), (2) a leader of worship (*θυσιάρχης*), and (3) a disciplinarian (*συναγωγεύς*). Isidor. de Eccl. Offic. II. 7, A.D. 625, describes the presbyter's duties as (1) to assist the bishop in consecrating, (2) in teaching, and (3) in presiding over Churches of Christ. The same three duties are brought out in the address to presbyters at ordination in the Pontifical quoted by Maskell Mon. Rit. II. 214.

(117). Eph. IV. 11 distinguishes *ποιμένες* (pastoral presbyters) from

18. The mediatorial duties of the presbyterate consist in continuously displaying Christ before the world as the Way to God, and therefore unceasingly interceding for all (118) and offering the sacrifice (119) for the living and the dead (120). It is the presbyter's duty to intercede (1) for unbelievers, that they may be brought to the faith; (2) for catechumens, that the door of heavenly mercy may be opened to them;

διδάσκαλοι (teaching presbyters); Hermas Vis. III. 5, 1, ἐπίσκοποι (disciplinary presbyters) from διδάσκαλοι (teachers). Cyprian Ep. 23 (Oxf. 29) mentions teaching presbyters as a class by themselves. Epiph. Haer. 42, 2; Euseb. VII. 24. In the Greek Church of to-day a presbyter is not a penitentiary or disciplinarian unless he is appointed. See *Penance*, note 19.

(118). James v. 14-16 attributes to presbyters a ministry of healing both body and soul by their prayers. Cyprian Ep. 63 (Oxf. 65), 2 says that a lapsed bishop "cannot claim to himself the priesthood of God, nor make any prayers for his brethren in His sight." In Eus. III. 23 St. John says to the robber: I will intercede with Christ for thee. Cyprian Ep. 67, 2: We ought to choose none but unstained and upright ministers for priests, who may be heard in the prayers which they make for the safety of the Lord's people, since it is written, God heareth not a sinner. . . . Those should be chosen for God's priesthood whom it is manifest God will hear. Ep. 65: Every one honoured by the Divine priesthood . . . ought to serve only the altar, and give his whole time to prayer. Prayer of Pseudo-Ambrose ap. Migne XVII. p. 754, c. 5: Since Thou hast appointed me, a sinner, to be intermediary between Thee and Thy people. Concil. Clovesho A.D. 747, Can. 10: Lest they be found ignorant in these intercessions which they make to God. Egbert's Excerpt. 160, A.D. 740: It becomes good secular men to be defenders of the Church, but it concerns spiritual men to be intercessors for all the people of God. Syn. Trull. A.D. 692, Can. 13, requires priests to be continent, "that they may obtain from God what they ask in simplicity." Alcuin to Ethelhard l. c. p. 477 says: Vos intercessores saecularium. Alfred Boethius, c. XVII. calls presbyters "gebedmen," *i.e.*, praying men. See *Order*, § 3; *Baptism*, note 268; Craisson, § 1726.

(119). Apost. Const. VIII. 5, the prayer for a bishop is: That he may appease Thee unceasingly, and present to Thee the gifts of Thy holy Church. Freeman Principles I. 209: What is priesthood but the power to present acceptably.

(120). Apost. Const. VIII. 44: When invited to the memorials of the dead, feast with good order . . . as disposed to intercede for those that are departed.

(3) for the lapsed, that they may receive the benefit of penance (121); (4) for the faithful individually, that every change in life may increase their holiness (122); and (5) for the whole Church, that its offering may be hallowed to be the memorial before God of the sacrifice of Christ (123). Hence the duties of the presbyterate are said to consist in solemnly offering (offerre) or privately consecrating (conficere) the Eucharist, in blessing the people, in praying for sinners, and in baptizing (124).

(121). Roman Clergy to Cyprian Ep. 30, 6; Coelestin, A.D. 425, ap. Labbé II. 1616: When the prelates of the holy congregations discharge the legation committed to them, they plead the cause of mankind before the Divine clemency, and the whole Church mingling its sighs with them, they beseech and pray that the faith may be granted to infidels, that idolaters may be delivered from the error of their impiety, that the light of truth may appear to the Jews, that heretics may recover, that schismatics may receive the Spirit of reviving charity, that the remedy of penitence may be conferred on the lapsed, that to catechumens brought to the sacrament of regeneration the court of heavenly mercy may be opened. Heb. v. 2 speaks of a priest "bearing gently with the ignorant and erring." Hugo de St. Victor, ap. Maskell Mon. Rit. II. 247: Priests perform the office of mediator in that they make intercessions with God for the sins of the people . . . and offer the people's prayers to God in interceding for sinners.

(122). Augustin Epist. 149, 16: Intercessions are made when the people are blessed, for then the prelates like advocates, by means of the imposition of the hand, present them to the all-merciful Majesty. Nicolaus, A.D. 864, ap. Gratian Caus. XXXI. Qu. II. c. 4; Forms of Espousal 8, A.D. 946: The mass-priest shall be at the marriage, who shall celebrate their coming together with God's blessing. Concil. London A.D. 1175, Can. 17: Let no faithful man marry in private but in public, by receiving the priest's blessing.

(123). Hieronym. adr. Lucifer. III. 1672: The function of a presbyter is to obtain by his prayer the coming of the Lord in the Eucharist, and if he be a bishop to consecrate the oil of chrism, to lay on hands, to make Levites presbyters. *Id.* Ep. ad. Heliodor.: [Presbyters] make the Lord's Body by the sacred prayer (sacro ore).

(124). Ambros. ap. Gratian Caus. XVI. Qu. I. c. 21, enumerates the presbyter's duties as baptizing, preaching, giving penance. Apost. Const. III. 20: The presbyter's office is to teach, to offer, to baptize, to bless the people; c. 28: A presbyter blesses, but does not receive the blessing, except from a bishop or fellow-presbyter. Hieronym. *Ibid.* I. Dist. XCV.

19. The magisterial duties of the presbyterate consist in exhibiting Christ before all men as the Truth, and therefore teaching by word and example the truth committed to the Church (125) concerning both doctrine and morals. In some parts of the Church public instruction was formerly given by all the presbyters in succession, the bishop having the last word (126); in others presbyters gave instruction in morals and discipline, the teaching of doctrine being reserved to the

c. 6: Because it is written [1 Tim. v. 17], Presbyters shall be worthy of double honour who labour in the word, it is seemly for them to preach, useful for them to bless, suitable for them to confirm, becoming for them to give communion, necessary for them to visit the infirm, to pray for the sick, and to fulfil all the sacraments of God. Gregory *Ibid.* Caus. XVI. Qu. 1. c. 24, enumerates the presbyter's duties as preaching, baptizing, communicating the people, praying for sinners, imposing penance and forgiving sins. Concil. Clovesho A.D. 747, Can. 9, says baptizing, teaching, and visiting, which Can. 11 enumerates as baptizing, teaching, judging, showing that visiting or judging is what Ambrose calls giving penance, and includes what Gregory calls imposing penance and forgiving sins. Egbert's Pontif. p. 366: It is the duty of the presbyter to bless, to offer, to preside (praeesse) well, to preach, to baptize, to give communion, where praeesse means ruling and governing in the inner tribunal, that of penance. Lacy's Pontifical, p. 87: Sacerdotem oportet offerre, benedicere, precare (? praeesse), praedicare, conficere et baptizare. Ordo Romanus ap. Hittorp. p. 93, says offerre, benedicere, praeesse, praedicare, baptizare.

(125). Acts XX. 29, 30; 1 Thess. v. 12; 1 Tim. III. 2; v. 17; Tit. I. 9 recognise teaching as the duty of presbyters. Iren. Haer. IV. 26, 2 speaks of the presbyters as having "the certain gift of truth;" and v. 20, 7 of the audacity of questioning their knowledge of the faith; III. 2, 2 and 3, 1 speaks of the succession of the presbyters being the guarantee of tradition. Apost. Const. II. 57 speaks of preaching as the right of presbyters. *Ibid.* VIII. 16, the bishop prays that the presbyter, filled with powers of healing and the word of teaching, may in meekness instruct God's people. Hieronym. ap. Gratian I. Dist. XCV. c. 6, says it is proper for presbyters to minister the sacraments, and to preach in the presence of the bishop. Leo, A.D. 453, *Ibid.* Caus. XVI. Qu. 1. c. 19; Excepting the priests (sacerdotes) of the Lord, let no one presume to preach.

(126). Apost. Const. II. 57: Let the presbyters one by one, not all together, exhort the people and the bishop in the last place, as being the commander. Sylvia in Duchêsne Origines, p. 474, describes this as the practice of the Church of Jerusalem in the 4th century.

bishop (127). In others, again, after the outbreak of the Arian heresy, all public teaching was reserved to the bishop (128). By Western rule individual presbyters (129) are not allowed to act as public preachers, unless either (1) they are intrusted with a cure of souls, as parochial incumbents (130); or (2) are masters or doctors in theology, when they are deemed to have a commission from some theological faculty; (131) or (3) are otherwise specially delegated thereto by the bishop.

20. The pastoral duties of the presbyterate consist in communicating Christ to others as the Life, by feeding the flock as stewards with the Divine mysteries (132), and exercising over

(127). Clem. Recog. III. 66: Hear [the bishop] with all attention and receive from him the doctrine of the faith; and from the presbyters the monitions of life, and from the deacons the order of [ceremonial] discipline.

(128). Socrates v. 22; Cyprian Ep. 55 (Oxf. 58), 4 bids them not to be disturbed at not seeing the brotherhood gathered together, nor hearing the bishops discoursing. Possidonius in Vit. Augustin c. 5, vol. x. 260, says that Valerius, Bishop of Hippo, was the first who departed from this rule by allowing Augustin to preach before him. Chrysostom preached many sermons as a presbyter at Antioch, A.D. 386, Hom. 3 in Ep. I. ad. Cor. c. 3.

(129). Innocent III. in Decret. Lib. v. Tit. VII. c. 2, forbids self-appointed persons to preach. Const. 1 Arundel, A.D. 1408: We ordain that no secular or regular, unless authorised by the written law or by special privilege, take to himself the office of preaching.

(130). 2 Tim. II. 2: ἱκανοὶ ἕτέρους διδάξαι; 1 Tim. III. 2: διδακτικός, v. 17; Tit. I. 9: παρακαλεῖν ἐν τῇ διδασκαλίᾳ; Concil. Tolet. VIII. A.D. 653, Can. 8: It is the business of presbyters to teach others, and to set them an example of life and manners. Concil. Clovesho, A.D. 747, Can. 1 and 8: That others, by the example and advice of presbyters, may be incited to the service of God. Egbert's Excerpt 3, A.D. 740: That on all feast and Lord's days every presbyter preach Christ's gospel to the poor. Elfric. Can. 23, A.D. 957; Edgar's Law 52 and 66, A.D. 960: That every priest both teach well and give a good example; Cap. 28 Theodulf, A.D. 994. Innocent III. in Decret. Lib. III. Tit. I. c. 10; Const. 10 Langton, A.D. 1222: We strictly command parochial incumbents to feed the people with the word of God as God inspires them with it, lest they be justly thought dumb dogs. Const. I. Arundel, A.D. 1408; Lynd. 288 says: By written law or by special privilege, Can. 50, A.D. 1603.

(131). 13 Eliz. c. 12 sec. 6; Ayliffe 354.

(132). Luke XII. 41-43; XXII. 29: I appoint unto you a kingdom.

it the discipline which makes for holiness. They include (1) giving or withholding the communion and other sacraments, (2) imposing canonical punishments (133), and (3) as a necessary consequence deciding controverted points of faith and morals (134). These duties belong to the presbyterate collectively. The single presbyter's commission is confined to the private administration of them within prescribed limits (135), and is therefore said to be a commission of the inner tribunal only.

Col. I. 13; Rev. I. 9; 1 Tim. v. 15 calls them *οἱ προεστῶτες πρεσβύτεροι*. Tit. I. 7: *θεοῦ οἰκονόμους*. In Acts XX. 28 the presbyters of Miletus are exhorted to feed (*ποιμαίνειν*) the flock. Iren. III. 3, 1 says that the Apostles delivered up their own place of government to the presbyters, to whom they committed the Churches. Cyprian Ep. 54 (Oxf. 59), 5: Priests, that is God's stewards, are ordained by His decree. *Ibid.* § 20, speaks of the distinguished clergy who preside with Cornelius at Rome. *Id.* adv. Judaeos III. 66: I will give to you shepherds according to Mine own heart, and they shall feed the sheep, feeding them with discipline. In Apost. Const. VIII. 16 the ordainer prays that the presbyter "may help and govern Christ's people with a pure heart;" VIII. 44: The presbyters and the deacons are those of authority in the Church next to God Almighty and His beloved Son. Hieronym. quoted above, note 26; Isidor. Sent. III. 33–37. The Gallican ordination-prayer ap. Duchêsne, p. 345, asks "that they may exercise a censorship of morals by the example of their own conversation." Concil. Aquisgran. A.D. 806, Can. 8: To presbyters equally with bishops is committed the dispensation of the mysteries of God.

(133). 2 Cor. v. 18; X. 8; 1 Tim. I. 20; Tertullian Apol. c. 39: Castigations and sacred censures are administered. With great gravity is the work of judging done as before qualified (certos) persons [deputed] from the face of God.

(134). Luke X. 16.

(135). Concil. Elib. A.D. 305, Can. 32 reserves to bishops the giving of penance for greater crimes. Concil. Carthag. II. A.D. 390, Can. 3 and 4; Concil. Hippo A.D. 393, Can. 30, only allows a presbyter to admit to communion in case of necessity. Pseudo-Alcuin ap. Hittorp. p. 50, allows a deacon to give penance where there is no presbyter, but declares that to bishops or presbyters have been given the keys of the kingdom of heaven. Rabanus Maur. De Cler. Inst. II. 30 declares a bishop or presbyter to be the minister of private penance, but the bishop, or the presbyter by order of the bishop, the minister of public absolution. Lynd. 335.

### The Episcopate.

21. Two views are current as to the relation of the episcopate to the presbyterate. According to one, the full power of order, *i.e.*, the spiritual gift necessary for the government of the Church, resides in the presbyterate equally with the episcopate, and presbyters collectively have succeeded to the place of the apostolic college (136). Since, however, according to Roman law, the act of any member of a college was deemed as authoritative as the act of all, to prevent lawlessness and confusion, the power of order was generally placed under restraint and concentrated for exercise in certain chief presbyters or bishops (137), who are

(136). Ignat. ad. Magnes. c. 6: Your bishop presides after the likeness of God, and the presbyters after the likeness of the council of the apostles; ad Trall. c. 3 and 4: Reverence the presbyters as the Sanhedrim of God and assembly of the apostles. *Id.* ad Smyrn. c. 8: Follow the presbyterate as the apostles. Iren. III. 3, 1, quoted note 132; IV. 26, 2: Even the presbyters who possess the succession from the apostles. Apost. Const. II. 26: Let the presbyters be esteemed by you to represent the apostles. Cyprian Ep. 68; Pontius, Vita Cypriani c. 5, says that Cyprian was advanced simultaneously to the office of the priesthood and the degree of the episcopate. Damasus, in Lib. Pont. p. 49, writes to Jerome: Pray for us, brother and fellow-priest. Hieronym. ap. Gratian I. Dist. XCIII. c. 24: The apostle teaches that presbyters are the same as bishops. . . . Presbyter and bishop (overseer) are names of age and dignity respectively. Concil. Aquisgran. A.D. 806, Can. 8: To presbyters equally with bishops is committed the dispensation of the mysteries of God. Only because of the authority of the supreme priesthood is the ordination and consecration of clerics reserved, lest discipline exercised by many should resolve concord. Bernaldus of Constance, A.D. 1088, De Presbyt. Offic. Tract. ap. Giesseler, § 30: Presbyters and bishops were anciently the same, and had the same power of binding and loosing, and other things now peculiar to bishops. But when they were restrained by episcopal excellence, that became unlawful which was lawful before.

(137). Apprehending the lawlessness of the last days (2 Tim. IV. 6–8), St. Paul, in the latter days of his life, desired to stir up the gift of government by focussing it to prevent divisions. Clem. Ep. 1 ad. Cor. c. 42, 44; Hieronym. ap. Gratian I. Dist. XCV. c. 5: Formerly presbyter meant the same as bishop. . . . But when each one said those whom he baptized were his and not Christ's, it was universally decreed that one selected from among the presbyters should be placed over the rest, to

now alone regarded as having succeeded to the full authority of apostles to represent Christ (138). According to this view, the episcopate is an accession of authority and a position of honour which has been introduced into the Church by Divine appointment (139) to uphold unity (140), but not an order having a

whom the care of the whole Church should belong. . . . As, therefore, presbyters know that by the custom of the Church they are subordinate to him who is placed over them, so should bishops know that they are superior to presbyters by custom rather than the truth of the Lord's dispensation, and that they ought to govern the Church in common. Elfric. Can. 17, A.D. 957: There is no more between a bishop and a presbyter but that the bishop is appointed to ordain and to bishop children, and to hallow Churches, and to take care of God's rights. Lancelotti Inst. Jur. Canon. I. Tit. XXI. c. 3: When many presbyters were constituted in every Church, for a remedy of schism it came to pass that one was chosen to be set above the rest. Euseb. X. 4; Apost. Can. 40: Let not the presbyters and deacons do anything without the bishop, for it is he who is intrusted with the Lord's people.

(138). In 2 Cor. II. 5–11, St. Paul forgives, in the person of Christ, the sin he had retained. Ignat. Trall. c. 2: When ye are subject to the bishop as to Jesus Christ, ye appear not to live after the manner of men. Cyprian Ep. 41 (Oxf. 45), 3: Unity [was] delivered by the Lord and through His apostles to us their successors. *Id.* ad. Firmilian. Ep. 75 applies the words, He that heareth you, &c., to the apostles, and "hereby to all presidents who succeed to the apostles by vicarious substitution (vicaria ordinatione)." Euseb. I. 1: It is my purpose to record the successions of the holy apostles; III. 4; and v. 20, and I. 12, calls them apostles, in imitation of the twelve, such as Paul. Hieronym. Epist. 41: With us, bishops hold the place of apostles. Concil. Carthag. VII. in Routh. Rel. Sacr. III. 130: The mind of our Lord Jesus Christ is manifest, who sent His apostles and gave to them alone the power which He had received from His Father, to whom, by the same power, we have succeeded, governing the Church and baptizing the faith of believers. Pseudo-Isidor. ap. Gratian. Caus. II. Qu. VII. c. 38: The apostles and their successors have decreed. Urban. II. *Ibid.* I. Dist. LXVIII. c. 6: Whose place bishops hold in the Church, Augustin has shown when he said: Instead of fathers thou shalt have sons [Ps. XLV. 16]. The apostles were sent as fathers. Instead of the apostles we have sons, *i.e.*, bishops have been appointed. Innocent. III. in Decret. Lib. I. Tit. XV. § 7.

(139). Ignatius Phil. 7: The Spirit proclaimed these words, "Do nothing without the bishop." *Id.* ad. Ephes. 3: Bishops settled everywhere, to the outmost bounds, are so by the will of Jesus Christ. *Ibid.* c. 6: We should look upon the priesthood (episcopate) even as we would upon the

distinct sacramental character (141). The other view considers that the full power of order resides only in the episcopate, from which it must follow that the presbyterate is an imperfect sacramental order.

22. The historical evidence seems to show that in apostolic times the government of the Church was committed to two sets of officers—(1) those who had a universal commission, consisting of the apostles themselves and other apostolic men, variously called in the New Testament apostles, prophets, teachers and evangelists (142); and (2) those who had only a

Lord Himself. *Ibid.* ad. Trall. 13: Submit yourselves to the bishop as to the commandment. *Id.* ad. Magnes. c. 6: The bishop presides in the place of God. Hilary, A.D. 375, Quaest. in Nov. Test. c. 1: Because all things are from God, he hath decreed that each Church should be presided over by one bishop. Albinus Flaccus de Div. Offic. ap. Hittorp. 72, calls the episcopate praecelsior locus honoris and major gradus.

(140). Cyprian Ep. 55, 24: As there is one Church of Christ diffused over the whole world in many branches, so there is one episcopate of many bishops diffused in number but concordantly agreeing.

(141). Peter Lombard, Thomas Aquinas, Bonaventura, in 4 Sent. Dist. 24, say so expressly. Also Lynd. 119, 309: Episcopatus non est ordo quoad sacramentum, 222, who also states, 153, that sacramental order does not include bishops, because bishops constitute an order of jurisdiction. Morinus de Sacr. Ord. Pars. III. Exer. 3, c. 1: The Council of Trent Sess. XXIII. c. 7 declares the episcopate to be a character, but as Lynd. 117, Benedict XIV., and Craisson, § 6596, point out, the character is the same character as that given in the presbyterate, given in the presbyterate as a *potestas ligata*, and in the episcopate unbound, so that the episcopate is the extension and completion of the presbyterate as to authority, but not as to spiritual capacity. Beveridge, Codex Can. II. c. 11; Devoti Lib. I. Tit. II., § 13; Ayliffe 114; Liebermann VI. 819, Perrone Praelect. Theol. 1845, p. 267: If a degree in the presbyterate comes under the name of order, the episcopate is a sacramental order; but if by order the rite of bestowing the presbyterate is understood, the common opinion of the scholastic doctors is that the episcopate is not an order distinct from the presbyterate. Cavagnis II. 101.

(142). In Acts XIII. 2, prophets and teachers appear as conducting worship (λειτουργούντων αὐτῶν), Ananias as baptizing (Acts IX. 18). In Διδαχή, XIII. and XV. 2, prophets appear as travelling instructors, who have liberty, if they choose, to settle in any Church, and to whom the first-fruits are, in that case, to be paid, for the maintenance of themselves and the poor. Quadratus is called a prophet by Euseb. III. 37, v. 17;

local commission, the presbyters and deacons of each city (143). To both of these classes was committed the full power of order necessary for the government of the Church (144), yet so that being committed to them collectively, the local officers were subject to the supervision of those holding the universal commission. On the death of the apostles and other primary holders of the universal commission, their lower duties appear to have been discharged by the various members of the local colleges; the presbyters becoming local teachers, the deacons local evangelists, and readers succeeding to the lower duties of the prophet's office (145).

23. The higher duties of the prophet's office, including the general supervision of all the Churches and the guardianship of their external as opposed to their internal relations, appears to have been placed under the charge of a few leading presbyters (146), such as Clement, Ignatius, and Polycarp, each

Iren. IV. 33, 6; II. 32, 4. When Clement wrote to the Church of Corinth in A.D. 98, it appears to have had no single local bishop of its own. On the other hand, Ignatius, in 112 A.D., writes to the Churches of Asiatic towns to obey their bishops. Euseb. III. 37 speaks of evangelists having the prophetical gift, and relates how those who "held the first rank in succession to the apostles" travelled about teaching everywhere.

(143). Phil. I. 1; Titus I. 5–7. Duchêsne, Fastes Episcopaux, p. 36.

(144). Διδαχή, 15. 1: Elect for yourselves overseers (*i.e.*, presbyters) and deacons worthy of the Lord, . . . for they, too, minister to you the ministry of the prophets and teachers.

(145). Ignatius ad Phil. 7 claims to have received a revelation from the Spirit. Martyrdom of Polycarp c. 16 calls him "an apostolic and prophetic teacher and bishop of the Catholic Church." The reader's office is derived from the prophet's by all the canonists. See below, § 45. The deacon still retains his function of reading the Gospel.

(146). These appear to be "the rulers," as distinct from the presbyters of Clem. I. Cor. 1 and 21, the ἡγούμενοι of Acts XV. 22 and Heb. XIII., the προηγούμενοι, as opposed to the πρωτοκαθεδρῖται (presbyters) of Hermas Vis. III. 97; the distinguished (ἐλλόγιμοι) men as opposed to the approved (δεδοκιμασμένοι) men of Clem. I. 44: The apostles appointed the aforesaid [presbyters and deacons], and subsequently instituted a means of continuation (ἔδωκαν ἐπινομήν), in order that when they fell asleep other approved men might succeed to their ministry. Teaching of Addaeus, p. 29: When the apostle Addaeus fell ill of the sickness of which he

of whom supervised those parts of the Church with which he was more immediately brought into contact. Ultimately a representative from every presbyteral college was associated in the work of oversight, and, by way of safeguard against Montanist errors, received a solemn imposition of hands distinct from that given to presbyters in general (147), whereby he was authorised to represent the apostolic college to those to whom he was sent, and received an extension of the gift he already possessed to enable him so to do. These representative presbyters being too modest to assume for themselves the title of apostolic presbyters, were then exclusively called supervisors or bishops (148) and rulers (rectores) (149). After-

departed from the world, he called for Aggaeus, and made him guide and ruler in his stead. Teaching of the Apostles, Can. 5, p. 39; Can. 17, p. 41 and 45: After the death of the apostles there were guides and rulers in the Churches, and whatsoever the apostles had committed to them they continued to teach. Clement, as a ruler (Clem. Strom. IV. 17 calls him apostle), rebukes the Corinthians, who had only presbyters and deacons over them. Polycarp, as a ruler (Irenaeus in Euseb. V. 20, calls him apostolical presbyter), exhorts the Philippians, who also had no bishop of their own. Ignatius calls himself Bishop of Syria (Rom. 2, Eph. 21, Magn. 14, Trall. 13) as well as Bishop of Antioch; and Irenaeus appears to have been the ruler for the Churches of southern Gaul (Euseb. V. 23). Isidor. de Offic. II. 5 says bishops were first appointed in the seats of apostles.

(147). Cyprian Ep. 51 (Oxf. 55), 24: He who neither maintains (1) the unity of the Spirit, nor (2) the bond of peace, but separates himself from the bond of the Church, and from the assembly of bishops, can neither have (1) the power nor (2) the honour of a bishop. Pseudo-Ambros. in 1 Tim. III. 10 says that originally the ordination of bishops and presbyters was the same. "Both are priests, but the bishop is the first, and he is the bishop who is first among presbyters.

(148). Theodore of Mopsuestia, in 1 Tim. III. 8, says that those who in after times were called bishops were at first known as apostles. When their number was multiplied they were unwilling to place themselves on an equality with apostles, and took to themselves the name of bishops, —a name formerly shared by the presbyters. Euseb. III. 23 calls the bishop the presbyter. Amalarius de Eccl. Offic. II. 13 says that they would not arrogate to themselves the name of apostles, and hence were called bishops.

(149). Pseudo-Ambros. de Dign. Sac. c. 2: Bishops are called rectors because the sheep are intrusted to them to be governed.

wards, following the precedent set by St. James at Jerusalem, the moveable episcopate was everywhere localised (150), in the East this higher authority being distributed among three grades of supervisors, viz. bishops, metropolitans and patriarchs (151) ; in Spain, among four, viz. bishops, metropolitans, archbishops and patriarchs (152). The Roman Church, refusing to acquiesce in any localisation which would exclude its president from sharing the supervision of the whole Church, has always treated all bishops, metropolitans, and patriarchs as co-ordinate members of one episcopal college, of which the Roman bishop is the head and chief (153).

24. Whatever view may be held as to its origin, there can be no doubt that the episcopate stands at the apex of the presbyterate(154). A bishop is therefore called the light of the body and

(150). Socrates v. 8 : Then too [A.D. 381] patriarchs were constituted, and the provinces distributed, for this had been indiscriminately done before because of persecution. Concil. Chalcedon, Can. 2, A.D. 451, forbids any one to be ordained without a local sphere (ἀπολελυμένως). The system of unattached bishops, probably derived from the Roman Church, appears to have been longest kept up in Ireland (as late as 1141 A.D.) and Scotland. Anselm writes to a titular King of Ireland in Todd's St. Patrick, p. 2, 4 : In your country bishops are chosen anywhere, and appointed without any definite localisation. Apparently Hippolytus, in 220 A.D., was an unlocalised bishop. Lightfoot, Ignatius I. 377, calls them a moveable episcopate.

(151). Denzinger I. 116 ; II. 33 ; Rabanus de Cler. Inst. I. c. 5.

(152). Isidor. Etymol. VII. 12 : Rabanus de Cler. Inst. c. 5 says that archbishops and metropolitans are the same.

(153). Cyprian Ep. 54 (Oxf. 59), 14, calls Rome "the chair of Peter and the chief Church, whence episcopal unity takes its source."

(154). Augustin ap. Gratian Caus. II. Qu. VII. c. 34 : According to the use of terms in the Church, the episcopate is higher than the presbyterate. Cyprian Ep. (Oxf. 17), 2 : Reserving to the bishop the honour of his priesthood and his dignity. Concil. Nic. A.D. 325, Can. 8, speaks of τὸ ἀξίωμα τῆς ἐπισκοπῆς. Apost. Const. II. 26 ; III. 11, 20 ; Concil. Sardic. A.D. 347, ap. Gratian I. Dist. LXI. c. 10, calls it culmen episcopatus ; Zosimus, A.D. 418, *Ibid.* I. Dist. LIX. c. 2, fastigium presbyterii ; *Id. Ibid.* I. Dist. XCVI. c. 14, § 6, pontificalis apex ; Leo, A.D. 446, *Ibid.* I. Dist. LXXX. c. 4, dignitas et sacerdotale fastigium ; Concil. Chalcedon A.D. 451, Can. 29, distinguishes the ἀξία τῆς ἐπισκοπῆς from the ἱερωσύνη. Gregory, A.D. 601,

the eye of the Church (155). By virtue of this position he has a double set of duties to perform (156)—(1) those which belong to him in common with all presbyters, including duties of intercession (157),

*Ibid.* Caus. IX. Qu. I. c. 6, distinguishes locus from ordo ; likewise Alexander III. in Decret. Lib. I. Tit. XIII. c. 1 distinguishes locus from dignitas.

(155). Pseudo-Ambros. de Dign. Sac. c. 6.

(156). An Anglo-Saxon writer, quoted in Lingard's Anglo-Saxon Church I. 97, thus describes the daily work of a bishop : In the first place of right, his prayers, and then his book-work, reading or writing, teaching or learning ; and his Church-hours at the right times, always in the manner that thereto belongeth ; and the washing of the feet of the poor, and the dealing out of alms, and the ordering of work where it may be needful. Also good handicrafts befit him, that men in his family may practise crafts, at least that no one may dwell there idle. Moreover, wisdom and wariness always befit bishops, and that those have worthy ways who follow them, and that they know some separate craft. Nothing that is needless becometh bishops, nor deceit, nor folly, nor excess in drink, nor childishness in talk, nor idle buffoonery in any wise, neither at home nor on the road, nor in any place ; but wisdom and wariness becometh their station ; and good behaviour is the duty of them that follow them. Dunstan's letter to Wulfsine, in Mabil. Act. Sanct. p. 239 : Be of good courage, brother, and boldly fulfil the work of the Lord, so as to save the souls of many. Let not thy tongue cease to preach, nor thy hand to work, nor thy foot to visit thy flock. Give alms abundantly, and raise up everywhere the holy Church of God. Be thou a pattern of salvation to all men, an example of most holy life, a source of comfort to the afflicted, and of counsel to the doubtful. Show forth in thy conduct the vigour of discipline, the confidence of truth, and the hope of virtue. Pride not thyself on the pomp of the world ; indulge not in the pleasures of the table nor the vanity of dress ; be not deceived by the tongue of flattery. Be not as a reed shaken with the wind, nor a flower drooping under the storm, nor a falling wall, nor a house built on the sand, but rather a temple of God, standing on solid rock, and inhabited by the Holy Spirit. Craisson, § 659.

(157). Apost. Const. II. 25 : Ye, therefore, O bishops, are to your people priests and Levites, ministering to the holy tabernacle, the Catholic Church, who stand at the altar of your God and offer to Him reasonable and unbloody sacrifices through Jesus the great High Priest. Ye are to the laity, prophets, rulers, governors, and kings, the mediators between God and His faithful people, who receive and declare His word. Ye are the voice of God and witness of His will, who bear the sin of all, and intercede for all. . . . For ye imitate Christ the Lord, and as He bore the sins of us all, . . . so ought ye also to make the sins of the people your own.

teaching ([158]), and government ([159]); and (2) those which are reserved to him because of his authority ([160]). Moreover, since the chief object of episcopal authority is to uphold unity at home and abroad, and to keep each portion of the

Pseudo-Isidor. Caus. I. Qu. I. c. 91, and Caus. III. Qu. I. c. 5, calls this consuming the people's sin.

(158). St. Paul, 1 Cor. I. 17, says that he was not sent to baptize but to preach. Apost. Const. II. 26 : The bishop, he is the minister of the word, the keeper of knowledge, the mediator between God and you in the several parts of your Divine worship. He is the teacher of piety, and next after God he is your father who has begotten you again to the adoption of sons by water and the Spirit. Gregory, A.D. 591, ap. Gratian I. Dist. XLIII. c. 4 : [A bishop] would not be clear of their blood if he forbore to announce to them the counsel of God. Concil. Clovesho, A.D. 747, Can. 1 : In the front of their decrees they established it with an authoritative sanction that every bishop be ready to defend the pastoral charge intrusted to him, and the canonical institution of the Church of Christ, with his utmost endeavour, . . . and be adorned with good manners, with the abstemious virtues, with works of righteousness, and with learned studies, that so they may be able to reform the people of God by their example, and instruct them by the preaching of sound doctrine. Nicolaus, A.D. 865 : As prelates are exposed to no small risk for having kept silence for the furtherance of godliness and the correcting of the Church, so those incur no small danger who refuse to obey when they ought to. Cnut's Law 26, A.D. 1017 : Let the bishops be preachers and doctors of God's law, and they ought diligently to give in charge and exemplify men's duty towards God. Can. 3 Odo, A.D. 943 ; Const. 22 Otho, A.D. 1237 ; Lynd. 64 says that a prelate dumb in teaching is no true prelate, because he does not fulfil a prelate's duties.

(159). Hippolytus Haer. Prooem : We [bishops], as participators in this grace, [1] high-priesthood and [2] office of teaching, as well as being [3] guardians of the Church. Polycrates in Euseb. III. 31, speaks of St. John as [1] a priest wearing the sacerdotal band, and [2] as a witness and teacher. Alcuin writes to Ethelherd, A.D. 793, in H. & S. III. 474 : Your throat ought to be the trumpet of God, and your tongue the herald of salvation. . . . Your place is to stand between God and man, [1] to communicate the commands of God to the people, and [2] to intercede with God for the sins of the people. . . . A bishop is [3] a general (speculator) who ought, with prudent counsel, to make provision for the whole army. Const. 2 Langton, A.D. 1222 : That every prelate sometimes hear confessions and give penance.

(160). Innocent III. in Decret. Lib. I. Tit. XV., says that the head of a bishop is anointed on account of authority, and his hands [a presbyter's hands being alone anointed in the Roman Church] on account of his ministry and office.

Church in communion with the rest (161), a bishop's special duties are those which the claims of unity impose on him. He is, therefore (1), in respect of intercession, the organ for uniting and presenting to God the prayers of other parts of the Church in union with those of his own, which he does in ordaining (162). He is (2), in respect of teaching, the local witness and keeper of the truth committed to the whole body, whence he is said to possess the gift of true knowledge or orthodoxy (163). (3) In respect of government he holds the place of St. Peter among the other apostles, being charged to feed the flock as the steward of the divine household (164). As such he is the executive officer in all

(161). Herm. Vis. II. 4, 3, is directed to send a copy of the message given to him to Clement, the bishop, who should communicate it to other cities. Cyprian de Unit. c. 5: Which unity we ought to hold and uphold, more particularly those of us who are bishops and preside in the Church, that we may also prove that the episcopate is one and undivided. Ep. 51 (Oxf. 55), 24: He could not hold the episcopate, since he has cut himself off from the body of his fellow-bishops and from the unity of the Church.

(162). In Lacy's Pontifical, p. 79, the bishop exhorts the people to pray that God may make him worthy to be heard on behalf of the ordinands.

(163). In Acts I. 21 St. Matthias is appointed to the apostleship, called also ἐπισκοπή, to be a witness of the resurrection. 1 Cor. IX. 1; XV. 8; Iren. Haer. III. 1, 1: It is unlawful to assert that the apostles preached before they possessed perfect knowledge; and IV. 26, 2. Euseb. II. 1 quotes Clement as saying: The Lord imparted the gift of knowledge to James the just, to John and Peter, after His resurrection, and they to the rest of the apostles. Διδαχή 11, 2: If [the apostle's and prophet's] teaching be to the increasing of righteousness and knowledge of the Lord, receive him as the Lord. Ep. Clem. ad. Jac. 6: Whatever the ambassador of the Truth shall bind upon earth, is bound also in heaven. The power of the keys and the gift of true knowledge are the two things prayed for in St. Peter's ordination-prayer, according to Clem. Hom. III. 72, and in the early Roman Ordinal in Duchêsne, p. 347.

(164). Ignat. ad Eph. c. 6 says of the bishop: Every one whom the Master of the house sendeth to be steward, we ought to receive as Him that sent him. Cyprian Ep. 54 (Oxf. 59), 5, says that bishops are the stewards of God, ordained by His decree. Pseudo-Ambros. de Dign. Sac. 1 ap. Migne XVII. 567: We to whom the dispensation of the Divine word is intrusted, and who are charged to feed and nourish the flock of Christ. Concil. Aquisgran. A.D. 806, Can. 123: Prelates owe to their subjects (1) the feeding of their bodies, (2) the feeding of their souls.

matters of public discipline (165), whence he is called successor of St. Peter, and is said to wield the power of the keys (166).

25. In applying this conception of the scope and object of the bishop's office (167) to the practical administration of the Church, the following duties of order are in the Western Church generally reserved to bishops, viz. (1) the ordination of presbyters and deacons (168); (2) the consecration of virgins (169); (3)

(165). 1 Cor. v.; Acts xv.; Concil. Elib. A.D. 305, Can. 32 reserves to bishops the office of dealing with penitents. Firmilian ap. Cyprian Ep. 74 (Oxf. 75), 16: The power of remitting sins was given to the apostles, and to the Churches which they founded, and to the bishops who succeeded them by vicarious ordination.

(166). Cyprian Ep. 26 (Oxf. 33): Our Lord, describing the honour of a bishop, says to Peter, I say unto thee that thou art Peter, and upon this rock will I build My Church, &c. Hence through the changes of times and successions the ordering of bishops . . . flows onwards, so that the Church is founded upon the bishops. Pseudo-Ambros. de Dign. Sacer. c. 2: All of us bishops (sacerdotes) have received in St. Peter the keys of the kingdom of heaven. Concil. Aquisgran. A.D. 806, Can. 9: The sacerdotal order in the New Testament took its rise from Peter. To him authority was first given. Truly the other apostles were admitted to share his honour. Innocent I. ad Victricium, A.D. 404, Ep. 2: The apostolate and episcopate takes its origin from Peter. Gildas c. 67, in H. & S. I. 75: They install sacrilegious persons in the chair of Peter [meaning in the office of a bishop].

(167). Concil. Hispal. II. A.D. 619, Can. 7 ap. Gratian I. Dist. LXVIII. c. 4, after enumerating the reservations to the bishops, continues: All these are unlawful (illicita) for presbyters, because they have not reached the apex of the pontificate which the authority of the canons enjoins to be peculiar to bishops only, that thereby, the distinction of grades and the height of dignity of the supreme pontiff may be exhibited. Isidor. de Eccl. Off. II. 7, 2: Only because of authority is ordination and consecration reserved to the supreme priest, lest the discipline of the Church, made cheap by many, should resolve concord and generate scandals. Concil. Clovesho A.D. 747, Can. 11: Let not presbyters attempt in any wise to perform those thing which are peculiar to bishops.

(168). Apost. Const. III. 11; Stat. Eccl. Ant. A.D. 505, Can. 69 ap. Gratian I. Dist. l. c. 55: Let him be deprived of the episcopate, *i.e.*, of the power of ordaining. Can. 17 Elfric, A.D. 957: The bishop is appointed to ordain.

(169). Concil. Carthag. II. A.D. 390, Can. 3 ap. Gratian Caus. XXVI. Qu. VI. c. 1, reserves to the bishop the consecration of the chrism, the consecration of virgins, and the public reconciliation of a penitent. Concil.

the setting up and hallowing of altars and churches(170); (4) the confirmation of the baptized(171); (5) the public reconciliation of heretics(172) and penitents(173); (6) the consecration of the chrism and the holy oils(174); (7) the giving of the greater or triple benediction(175); and (8) the giving of letters dimissory(176). A bishop's duties are, therefore, commonly said to consist in judging, interpreting, ordaining, consecrating, confirming, hallowing the Eucharist, and baptizing(177). All of these

Carthag. III. A.D. 397, *Ibid.* c. 2, forbids a presbyter to consecrate a virgin without consulting the bishop. Concil. Rothomag. A.D. 650, Can. 9: Respecting the veiling of virgins by presbyters, it is ordered that if any presbyter shall in future attempt to do it he shall be condemned as a transgressor of the canons. Concil. Paris VI. A.D. 829, *Ibid.* Caus. XX. Qu. II. c. 3: Should either an abbess or any other consecrated virgin give way to such audacity as to presume to veil a widow or a consecrated virgin, let her be subject to canonical punishment until satisfaction. Nevertheless, Theodori Poenit. II. III. 4, A.D. 673, in H. & S. III. 192, says: A presbyter may consecrate an abbess with celebration of mass, and c. 8, that according to the Greeks he may consecrate a virgin with the veil.

(170). Concil. Agath. Can. 43, A.D. 506, ap. Gratian Caus. XXVI. Qu. VI c. 3, forbids a presbyter to consecrate an altar. Concil. Tolet. VIII. A.D. 653, Can. 7, forbids presbyters to hallow churches, to consecrate the chrism, or to ordain. Elfric Can. 17, A.D. 957.

(171). Pseudo-Isidor. ap Gratian III. Dist. v. c. 4. See *Baptism*, § 23.

(172). See *Baptism*, § 15.

(173). Concil. Elib. A.D. 305, Can. 32; Concil. Arelat II. A.D. 426, Can. 26; Concil. Araus. A.D. 441, Can. 1; Concil. Hispal. A.D. 619, Can. 9; Concil. Agath. A.D. 506, Can. 44: It is not lawful for a presbyter to bless the people in Church, or to reconcile a penitent.

(174). Epist. ad Ludifred, note 177; *Baptism*, § 22.

(175). Germanus ap. Duchêsne, p. 212; Concil. Aurel. I, A.D. 511, Can. 26; Concil. Agath. A.D. 506, Can. 44.

(176). Concil. Aurel. III. A.D. 533, Can. 3, that neither abbots, chantry-priests (martyrarii), recluses nor presbyters give apostolic letters (apostolia). Concil. Turon. II. A.D. 567, Can. 6: That no clerk or layman, but only a bishop, give letters commendatory (epistolia). See above, § 5, note 16.

(177). Apost. Const. VIII. 28: A bishop blesses, but does not receive the blessing. He lays on hands [confirms], ordains, offers, receives the blessing from bishops, but by no means from presbyters. Epist. ad Ludifred ap. Gratian I. Dist. XXV. c. 1, § 9: To the bishop belong the consecration of churches, the anointing of altars, and the hallowing of the chrisms. He distributes the offices and orders in the Church. He blesses holy virgins,

duties are, nevertheless, allowed to be performed by a presbyter properly authorised (178), excepting the ordination of a presbyter or deacon (179). The bishop's duties of office under the territorial system, whether as delegate of the Pope, as feudal visitor in spirituals, or as the representative of the civil power in dealing with spiritual persons, belong to the subject of Church Government rather than of Order.

26. Before any one can be deemed worthy of promotion to so exalted a position (180), it is necessary that he should possess four

and whilst each one has his relative precedence, the bishop is the general arranger of all. Innocent III. A.D. 1199, in Decret. Lib. IV. c. 4: Lacy's Pontifical, A.D. 1450, p. 95.

(178). For consecrating the chrism, see *Baptism*, note 176; for confirmation, *Ibid.* § 22. Hieronym. ap. Gratian I. Dist. XCV. c. 6; Concil. Westminster A.D. 1138, Can. 4, allows a bishop to consecrate a Church by the hand of another. Concil. Epaon. A.D. 517, Can. 16, authorises a presbyter to reconcile a heretic.

(179). Chrysost. Hom. in 1 Tim. XI. 1: Only in ordaining do bishops surpass presbyters. Hieronym. Epist. 146: Excepting ordination, what does a bishop do that a presbyter does not?

(180). Apost. Const. VIII. 4: A bishop to be ordained is to be unblamable in all things, chosen by the whole people . . . having a good testimony from all men as to his worthiness for so great and glorious an authority . . . all things relating to his piety towards God being right . . . being unblamable in the course of his life. *Ibid.* II. 1: Let him, therefore, if it be possible, be well educated, but at any rate let him be skilful in the word, and of competent age. *Ibid.* c. 2: Let him be sober, prudent, decent, firm, stable, not given to wine, no striker but gentle, not a brawler, not covetous, not a novice; c. 3: Let examination also be made whether he be unblamable as to the concerns of this life, for it is written: Search diligently for all the faults of him who is to be ordained to the priesthood (Lev. XXI. 17). On which account let him be also void of anger; c. 5: A bishop must be no respecter of persons; c. 6: Let not a bishop be given to filthy lucre, rather suffering than offering injuries . . . no admirer of the rich nor hater of the poor, nor evil speaker nor false witness . . . not double-minded nor double-tongued, not ready to hearken to calumny or evil-speaking; c. 9: For the bishop must not only give no offence, but must be no respecter of persons, in meekness instructing them that offend; c. 21: Be gentle, gracious, mild, without guile, without falsehood; not rigid, not insolent, not severe, not arrogant, not unmerciful, not puffed up, not a man-pleaser, not timorous, not double-minded . . . not hasty in thrusting out and expelling, but steady; not one that delights

personal qualifications, viz. (1) some degree in the ranks of holy order; (2) blameless conversation; (3) sound knowledge; and (4) clear speech, or the gift of making himself understood (181). In the code of the ancient Gallican Church these desiderata are expressed as follows (182): "A bishop must be naturally prudent, docile, chaste, sober, careful of his affairs, humble, affable, meek, learned, skilled in the law of the Lord, cautious in interpreting Scripture, versed in the dogmas of the Church, and able to express in simple words the documents of the faith." Besides these qualifications a bishop must also have a proper election.

27. As the episcopate is admitted by all to be an amplification or extension of the presbyterate (183), it cannot be bestowed on one who is not already qualified to receive such extension. Although in the early days of the Church laymen were occasionally advanced to the episcopate (184), yet such ordinations were

in severity; not heady. Gratian Caus. II. Qu. VII. c. 28, 29, 32, 34: Formerly the election was signified by all the people exclaiming: He is worthy. Ayliffe 119.

(181). Iren. Haer. IV. 26, 4: Adhere to those who hold the apostles' doctrine, and who, together with the order of the presbyterate, display sound speech and blameless knowledge; c. 5: Where the gifts of the Lord have been placed, there it behoves us to learn the truth, viz., from those who possess that succession of the Church which is from the apostles, and among whom exists that which is sacred and blameless in conduct, as well as that which is incorrupt and unadulterated in speech. Teaching of the Apostles, Can. 11: Whosoever is unacquainted with the faith of the Church, and the ordinances and laws which are appointed in it, let him not be a guide [bishop] or a ruler [rural-bishop].

(182). Stat. Eccl. Ant. A.D. 505, ap. Gratian I. Dist. XXIII. c. 2; incorporated in Eadulf's Profession, A.D. 796, in H. & S. III. 506.

(183). Benedict XIV. 20 Oct. 1756, in Craisson, § 1737, 2020: No one forbids discussion as to whether the character received in episcopal consecration differs from that of the presbyterate, or whether it is not rather an extension of the character already bestowed in the presbyterate. It must at least be admitted that by episcopal consecration the presbyter's order is extended and perfected, so that no one can be made a bishop except by receiving such extension.

(184). *E.g.*, St. Matthias. The Roman Breviary relates of St. Ambrose that he was elected Bishop of Milan whilst only a catechumen, and servatis omnibus ex instituto Ecclesiae ordinum gradibus, sacerdotale onus suscepit

deemed irregular unless subsequently confirmed by the Church at large (185). Now, since subdeacons have taken the place of laymen as the lowest of the three holy orders, election to the episcopate is forbidden to all below the degree of the subdiaconate (186), and consecration to the episcopate to all who have not been regularly advanced from readership to the presbyterate (187) or diaconate (188).

28. A bishop must further be blameless in conversation (189). Hence all the qualifications and disqualifications which apply to holy orders apply *a fortiori* to the episcopate (190); and by

(185). Cyprian Ep. 51, 8, says that Cornelius was a lawful bishop, because he was promoted through all the ecclesiastical offices. Leo, A.D. 446, ap. Gratian Caus. 1 Qu. VII. c. 18: Those whose advancement has only this fault that they were chosen from laymen to the episcopal office, we permit to retain their place. Tarasius, created Patriarch of Constantinople A.D. 787, per saltum, was allowed by Adrian I. to be a true bishop. Hutton, p. 285, states that Adrian gave him a dispensation.

(186). Innocent III. in Decret. Lib. I. Tit. XIV. c. 9, allows a subdeacon to be elected, because the subdiaconate is now a holy order.

(187). Concil. Sardic. Can. 13, A.D. 347, ap. Gratian I. Dist. LXI. c. 10: Should a rich layman or a pleader be postulated bishop, let him not be ordained unless he have previously been admitted to the functions of reader and the office of presbyter or (aut) deacon, and so by single steps, if he be found worthy, let him ascend to the height of the episcopate. Concil. Barcin. II. A.D. 599, Can. 3, forbids laymen to be advanced to the episcopate without passing through intermediate degrees. Syn. VIII. A.D. 869, Can. 5, decrees that no one may ascend to the episcopate except by passing through the lower orders, which it enumerates as those of reader, subdeacon, deacon, presbyter. Bellarmin. de Ord. c. 5 goes further: It is impossible for one to be ordained bishop who was not before a presbyter, unless he then receives both ordinations at once, because each is of the essence of the episcopate.

(188). Mabillon Mus. Ital. I. 146 has shown that up to the 11th century it was usual at Rome to elect a deacon for pope, and that many popes never passed through the presbyterate.

(189). Iren. Haer. IV. 26, 5, quoted above; Concil. Laodic. A.D. 363, Can. 12, says: δεδοκιμασμένος ἔν τε τῷ λόγῳ τῆς πίστεως καὶ τῇ τοῦ εὐθέος λόγου πολιτείᾳ. Egbert's Excerpt 57, A.D. 740; Isidor. de Offic. II. 5, 16: How shall he correct others who is exposed to the retort, First teach thyself to do what is right?

(190). Concil. Nic. A.D. 325, Can. 4 and 5; Augustin ap. Gratian I. Dist. LXXXI. c. 4, 5, 7; Concil. Tolet. IV. A.D. 633, Can. 19, *Ibid.* I. Dist.

English rule there is a further disqualification, that of having been a pluralist (191). Greater age is also necessary, which was formerly fixed at fifty years (192), but now full thirty suffice (193). A bishop ought also to be a careful business-man (194).

29. To ensure knowledge of apostolic doctrine a bishop must be learned (195) and skilled in the law of the Lord (196). To test his knowledge and the soundness of his faith he ought, therefore, to be previously interrogated (197). In the African Church the interrogatories were required to have reference to the doctrine of baptism, the future resurrection and judgment, the necessity of being in the Catholic Church for salvation, his willingness to hold communion with reconciled penitents, his

LI. c. 5, forbids any one to be consecrated a bishop who has been detected in any crime, who is stamped with infamy, who has admitted any crime by publicly doing penance, who has relapsed into heresy, who has been baptized or rebaptized in heresy, who has mutilated himself, or suffers from the natural defect or loss of a member, who has been more than once married, or has married a widow or divorced woman or a woman not a virgin, who has had a concubine, who is of servile extraction; a neophyte or layman who has done military service or has duties at court, or is ignorant of letters, or younger than thirty; who has not been regularly advanced through ecclesiastical degrees, who ambitiously seeks honour, who seeks the position by presents, who is designated by his predecessor to succeed him, who has not been elected by the clergy and people to preside over them, or assented to by the metropolitan and comprovincials. The same in Egbert's Qu. XV. A.D. 734; Decret. Lib. I. Tit. XIII. c. 4.

(191). Const. 31 Othobon, A.D. 1268.

(192). Apost. Const. II. 1, not under fifty years of age, for such an one is in good part past youthful disorders and the slanders of the heathen.

(193). 3 and 4 Ed. VI. c. 12; 5 and 6 Ed. VI. c. 1; 8 Eliz. c. 1; 13 and 14 Car. II. c. 4, require every man which is to be consecrated bishop to be full thirty years of age.

(194). Gratian I. Dist. LXXXIX.; Apost. Const. II. 3.

(195). Hieronym. ap. Gratian I. Dist. XLIX. c. 2.

(196). Gregory, *Ibid.* I. Dist. LXXXVI. c. 5; Concil. Clovesho A.D. 747, Can. 1.

(197). Apost. Const. VIII. 4; Syn. VII. A.D. 787, *Ibid.* I. Dist. XXXIII. c. 6 requires a bishop to know both Testaments and the canons, the other as well as the penitential canons, whereas a presbyter need only know the penitential canons; the reason, according to Lynd. 335, being because a bishop is a judge of bodies as well as souls. See *Order*, § 34, 48.

toleration of second marriages, and the use of flesh for food (198). In mediaeval times the answers took the form of a document called a profession, which was drawn up in writing, and together with a declaration of feudal dependence on his consecrator was solemnly confirmed upon oath (199).

30. A bishop being not merely the guardian and keeper of apostolic tradition, but also its exponent and interpreter to others, preaching is his special duty. He must, therefore, be a man of clear speech, and able to express in simple language the truths of the faith (200). If all these requirements are satisfied he may be consecrated on any Sunday or festival independently of Embertides (201), because consecration is an accession of authority, not the bestowal of a distinct sacramental order; and, for the same reason, as well the dignity as the office of a bishop in a particular Church may be resigned (202).

(198). Concil. Carthag. I. A.D. 347, Can. 1. The interrogatories in mediaeval times in Lacy's Pontifical, p. 93, include: Will you devote yourself to ascertain the sense of Scripture, and teach that sense to the people by word and example? Will you accept, teach, and observe the decrees of the orthodox Fathers and the decretals of the Apostolic See? Will you be faithful, subject, obedient to St. Peter and his vicars, and the holy Church of Canterbury? Will you in every way eschew evil and do what is good? observe and teach chastity and sobriety? devote yourself to divine and keep aloof from worldly business? be humble and patient? ready of access, and merciful to the poor and strangers that are in need? Do you believe in the Holy Trinity, &c.? Do you believe that there is One Author of the Old and New Testaments, the Law, the Prophets, and the apostolic writings, Almighty God?

(199). Eadulf's Profession, A.D. 796, in H. & S. III. 506, is the earliest preserved of an English bishop. In it he pledges himself: I will take care to submit the neck of my humble obedience to thee, Ethelhard, and thy successors for ever. Const. 2 Langton, A.D. 1222.

(200). Isidor. de Offic. II. 5, 17: His speech ought to be unaffected, simple, straight, full of gravity and honesty, full of suavity and grace, dealing with the mystery of the law, the doctrine of faith, the virtue of continence, the discipline of justice; using to each one a different kind of address according to his profession and character, so that he know beforehand what, when, and how to deal with each.

(201). Egbert's Excerpt 96, A.D. 740; Devoti Lib. I. Tit. XIII. c. 1.

(202). Decret. Lib. I. Tit. VIII. c. 1.

### The Diaconate.

31. In contrast to the presbyterate, which is an order of the perfect charged with duties of intercession, teaching, and government, the diaconate is a ministerial order (203), created by the Apostles (204) to deal with the temporal concerns of the Church, the supply of necessaries to those in want, and the relief of other Churches. Having to prepare the materials for the corporate worship of the Church out of the people's offerings, and being thus associated in the service of the altar, deacons are accounted a holy order. And because they are endowed with a share in the sacramental gift of order by the imposition of hands, they are allowed to be also a hierarchical order, and have assigned to them the duties of local evangelists.

32. Primarily a deacon is concerned with temporal matters. To him is committed the charge of providing for widows and orphans, the sick and the infirm, the reception and entertainment of strangers and the placing of the faithful in Church (205), the supply of necessaries to Christians in prison, and the burial of the dead (206). He is also the ambassador of the Church to

(203). Apost. Const. III. 19; VIII. 46, 17; Concil. Nic. A.D. 325, Can. 14 ap. Gratian I. Dist. XCIII. c. 7; Concil. Laodic. A.D. 363, Can. 20, *Ibid.* c. 8.

(204). Acts VI.; Cyprian ap. Gratian I. Dist. XCIII. c. 25: Christ appointed the Apostles, but the Apostles appointed deacons. Ignatius ad Trall. 3: Let all reverence the deacons as a commandment of Jesus Christ, and the bishop as Jesus Christ.

(205). Apost. Const. II. 58; Dionys. Eccl. Hier. 5.

(206). Acta Perpetuæ c. 3: The blessed deacons ministered to us in prison. Roman clergy to the clergy of Carthage in Cyprian Epist. 2, 3: There are other matters which are incumbent on you [in the bishop's absence]. If you have widows or bedridden people unable to maintain themselves, or those who are in prisons or excluded from their own dwellings, these ought to have some to minister to them. . . . And as matter of the greatest importance, if the bodies of the martyrs and others be not buried, a considerable risk is incurred by those whose duty it is to do this office. Egbert's Pontifical, which adds: Christ was a deacon when He broke the loaves to feed the multitude and washed the feet of His disciples. Devoti Lib. I. Tit. II. § 27; Concil. Aurel. V. A.D. 549, Can.

convey relief to other Churches (207). For these purposes the people's offerings are intrusted to him, and he is directed to administer them under the bishop. Deacons are therefore said to be the ears, the mouth, the heart and soul, and the eyes of the bishop (208), and are required to be men of integrity, well pleasing to all (209).

33. Being charged with the care of the people's offerings, upon deacons devolved the duty of preparing the necessaries for solemn worship, and generally of attending to the work of the Church and the administration of the sacraments (210). The deacon

20, and Egbert's Excerpt 105, A.D. 740: We think it reasonable to be observed for mercy's sake that they who are imprisoned for any crime be looked after by the archdeacon or reeve [temporal administrator] of the Church every Lord's day, that the straitness of them that are in bonds may be mercifully relieved and competent victuals be given them by the bishop from the house of the Church.

(207). Ignat. ad Phil. c. 10: Since the Church at Antioch possesses peace, it will become you as a Church of God to elect a deacon to act as the ambassador of God to [the brethren] there, that he may rejoice along with them when they are met together and glorify the name. Eph. 2: Crocus also [your deacon] I have received as the manifestation of your love.

(208). Apost. Const. II. 44 and III. 19; Rufinus ap. Gratian I. Dist. XCIII. c. 6: Let the deacons of the Church be, as it were, the bishop's eyes, glancing over and observing with care the acts of the whole Church, and carefully watching should they see any one approaching the precipice and near to sin, in order to report the same to the bishop. Clem. Recog. Epist. ad Jac. 12; *Id.* Hom. III. 67.

(209). Ignat. ad Trall. c. 2: It is fitting that deacons as being [the ministers] of the sacramental representations of Jesus Christ, should in every respect be pleasing to all. Epist. Polycarp. c. 5: Let the deacons be blameless . . . walking according to the truth of Christ, who was the deacon of all.

(210). Ignat. ad Trall. c. 2: The deacons are not ministers of meat and drink [only], but servants of the Church of God. Cyprian Ep. 64 (Oxf. 3), 3: The Apostles appointed for themselves deacons as ministers of their episcopacy and of the Church. Basil Ep. 169 (al. 412) to Gregory: Glycerius was consecrated by ourselves as deacon of the Church of Venasa to be a minister to the presbyter there, and to attend to the work of the Church. Martyrdom of Habib the deacon (Ante-Nicene Lib.) 91: Habib the deacon went secretly into the Churches which were in the villages [A.D. 310], and ministered and read the Scriptures.

called to prayer, and himself led the prayers of the people, or suggested to the bishop what should be prayed for (211). He dismissed the catechumens in proper order. He read out the names of the living who offered, and of the dead for whom offerings were made (212). He prepared the corporate offering for the Eucharist and placed it upon the altar (213). He waited

Apost. Const. II. 54; Hieronym ap. Gratian I. Dist. XCIII. c. 23: The deacons are they of whom we read in the Apocalypse: The seven angels of the Churches. . . . The deacon is called the minister of God; and as every exercise of the priesthood requires ministration (sicut in sacerdotio est ministratio), so the office of ministering presupposes authority to administer the sacrament [in ministro est sacramenti disponsatio administrationis—the ordinary reading is *dispensatio*, omitting *administrationis*]. . . . Bishops too are not allowed for fear of presumption to take the cup from the Lord's table unless it be handed to them by a deacon. . . . Levites place (inferunt) the offerings on the altar; Levites arrange the Lord's table; Levites stand round presbyters whilst they bless the elements; Levites pray (orant) before (ante) priests. . . . Then finally the deacon calls out: Open your ears to the Lord; he reads the Gospel; he exhorts and admonishes, whilst presbyters stand round, not to be heedless of or despise the voice which speaks these things; and announces peace. Epist. ad Ludifred ap. Gratian I. Dist. XXV. c. 1, § 7: It pertains to deacons to assist presbyters and to minister in all things which are done in Christian sacraments, to wit in baptism, the chrism, the paten and chalice; also to carry the offerings and place them on the altar, to arrange and vest the Lord's table, to carry the cross and to preach the Gospel and Epistle (apostolum). For as the preaching of the Old Testament is committed to readers, so is that of the New Testament to deacons. To him too belongs the ordering (officium) of prayers and the calling over the names [from the diptychs of the living and the dead]. He proclaims: Lift up your ears to the Lord. He calls to prayers. He gives the peace and announces [the dismissal]. Can. 16 Elfric, A.D. 957: The deacon is he that ministers to the mass-priest, and places the oblations on the altar, and reads the Gospel at the divine ministration. He may baptize children, and housel the people. They ought to serve their Saviour in white albs, and preserve the heavenly life with purity. Lacy's Pontifical, p. 85: Diaconum oportet ministrare ad altare; evangelium legere; baptizare et praedicare. See *Order*, note 50.

(211). Apost. Const. VIII. 35, 37; II. 57: After this let the deacon pray for the whole Church, for the world and the several parts of it.

(212). Concil. Constant. A.D. 536, ap. Labbé V. 1154.

(213). Concil. Ancyr. A.D. 314, Can. 2, calls this ἀναφέρειν. The presbyter's hallowing is called προσφέρειν.

on the bishop or presbyter whilst the latter summed up the people's prayers, and gave the invitation for the kiss of peace (214). He held the cup at the prayer of hallowing, and at the proper time consecrated it by bringing it into contact with the hallowed Bread (215). He led the fraction which followed, alone administered the cup to the people (216), carried the communion in both kinds to the sick (217), and took care of the Elements which remained (218). In short, the whole

(214). Cyril. Cat. Myst. 5; Epist. ad. Ludifred, quoted note 210.

(215). See *Eucharist*, § 6, note 72.

(216). Concil. Laodic. A.D. 363, Can. 25 ap. Gratian I. Dist. XCIII. c. 16: It behoves not the subdeacon to give the bread nor to bless the cup, which implies that these were the deacon's duties. Gelasius, A.D. 494, ap. Gratian I. Dist. XCIII. c. 13, says: Let no deacon have the right of exercising the consecration [praerogationem, which appears to mean the prayer of intercession, whereby the sacramental sign becomes the Holy Body, and has therefore been altered by Ed. Bas. into erogationem, meaning the distribution] of the Holy Body in the presence of a bishop or priest, but only in their absence. Concil. Arelat. A.D. 314, Can. 15, and Concil. Nic. A.D. 325, Can. 18, both say that the offering was made by deacons, and forbid it. Ambros. de Offic. I. 41 makes Laurence the deacon address his bishop, Sixtus II. A.D. 258, as he was being led away to execution: "Whither goest thou, my Father, without thy son? Whither goest thou, high priest, without thy deacon? Never didst thou offer the sacrifice without me by thy side. Wherein have I displeased thee? Hast thou ever found me negligent of my duties? Examine and see whether thou hast chosen in me an unworthy servant to whom to intrust the consecration of the Lord's Blood (Dominici sanguinis consecrationem)." Devoti explains these words to mean Sanguinem consecratum (see *The Eucharist*, note 72), and Le Brun quotes, Haec commixtio et consecratio, as used in the same sense. But Bona Rer. Lit. I. 25, § 4, observes that the deacon consecrated the cup ministerially, and quotes Pseudo-Ambros.: Consors diaconus erat consecrationis. Theodori Poenit. II. II. 18, in H. & S. III. 192, states that "deacons may baptize, and bless food and drink, but not give the [hallowed] Bread."

(217). Justin Martyr I. 67: To those who are absent a portion is sent by the deacons. Can. 16 Elfric, A.D. 957, quoted above. Concil. Westminster A.D. 1138, Can. 2. See *Eucharist*, § 6.

(218). Apost. Const. VIII. 13: When all, both men and women, have partaken, let the deacons carry what remains into the vestry. Pseudo-Clement ap. Gratian III. Dist. II. c. 23: The presbyter, deacon, and subdeacon ought to guard the remains of the Lord's Body with fear and

conduct of the ceremonial of worship lay with him, always excepting the collect-prayers (219). Because of these duties the diaconate is reckoned a holy ministry, and deacons are called Levites (220), and said to be the columns of the altar (221).

34. The deacon is, moreover, considered to have a share in the spiritual gift of order, because he is ordained by the laying on of hands (222). On this ground the office of local evangelist appears to have been assigned to him, and it is his province to read the Gospels (223). With the bishop's sanction he is also permitted to explain them (224), but he is forbidden to

trembling. Leofric's Missal, p. 262, directs the deacons to bring out of the vestry the preconsecrated Host on Good Friday.

(219). Ramsay, "The Church in the Roman Empire," p. 459, explains the assumption by Glycerius the deacon of the name and the dress of patriarch by saying that, as director of ceremonies at the village-festival, it would be only natural for him to assume the dress and the character of the highest religious official, the patriarch, just as the leader of a pagan festival would bear the name and dress of the deity whom he represented. Theodori Poenit. II. II. 14, in H. & S. 192, quoted in *The Eucharist*, note 165.

(220). Concil. Carthag. II. A.D. 390, ap. Gratian I. Dist. XXXI. c. 3: Levitae vel qui sacramentis divinis inserviunt. Pseudo-Hieronym. *Ibid.* I. Dist. XCIII. c. 23; Leofric Missal 215.

(221). Isidor. de Offic. II. 8, 3; De Orig. Offic. IX. 1.

(222). In Apost. Const. VIII. 18, the bishop prays that he who is now ordained deacon "may attain a higher degree." Stat. Eccl. Ant. A.D. 505, Can. 4 ap. Gratian I. Dist. XXIII. c. 11, directs the bishop "alone to place his hand upon his head, because he is not hallowed to the presbyterate, but to an office of service." In Acts VI. "they" laid their hands on them. Concil. Agath. A.D. 506, ap. Gratian I. Dist. LXXVII. c. 6, calls it the blessing of a deacon.

(223). Apost. Const. II. 57: Afterwards let a deacon or a presbyter read the Gospel. See above, § 22. Winchester Pontifical: Habet diaconus donum prophetiae.

(224). Some of the earliest deacons preached when disengaged from other duties—Stephen, Acts VI. 10; Philip, Acts VIII. 5. But after the peace of the Church it was not usual. Leo ap. Gratian Caus. XVI. Qu. I. c. 19; Hieron. Ep. 147; Clem. Recog. VI. 66 appears to mean that deacons gave ceremonial directions, and Gregory ap. Gratian I. Dist. XCII. c. 2 that they read the Gospel. Lynd. 288.

baptize (225). It is his business to announce to public penitents the penances which the bishop has imposed, to observe their walk and conversation, and report thereon to the bishop; but he is forbidden to give penance himself (226), except he is placed in charge of a people, or there is danger of death, and no presbyter can be had (227). He may not give the Lord's Body to the people except he is directed so to do by a presbyter (228), and may never hallow the oblation (229). He

(225). Apost. Const. VIII. 46: It is not lawful for a deacon to offer the sacrifice, or to baptize, or to give either the greater or the lesser blessing. . . . Stephen, who saw Christ on the right hand of God and the heavens opened, does nowhere appear to have exercised functions which did not appertain to his office of a deacon, nor to have offered the sacrifices, nor to have laid hands [in penance] upon any, but kept his order of a deacon unto the end. But if some do blame Philip our deacon, and Ananias our faithful brother, that the one did baptize the eunuch [Acts VIII. 38], and the other one Paul . . . [Acts IX. 16]: Philip and Ananias did not constitute themselves [to perform this office], but were appointed by Christ, that High Priest of God, to whom no being is to be compared. Gelasius, A.D. 494, ap. Gratian I. Dist. XCIII. c. 13: Without a bishop or a priest let deacons not venture to baptize, except extreme necessity compels. Concil. Ebor. A.D. 1195, Can. 5, and Const. 1 Langton, A.D. 1222: Let no deacon or inferior clerk baptize or enjoin penance, but only presbyters, except in extreme necessity. Const. 12 Edmund, A.D. 1236: We charge that deacons presume not to administer penance or baptism.

(226). Origen in Lev. v. 3: Following the example of Him who has given His priesthood to the Church (Heb. x. 21, 22), deacons and presbyters take upon themselves the sins of the people, and, imitating the Master, grant remission of sins. Cyprian Ep. 18 (Oxf. 12); Concil. Tolet. I. A.D. 400, ap. Gratian I. Dist. l. c. 68, accordingly requires deacons who have fallen into sin to be restored only as subdeacons, "so that they never lay hands on penitents." Albinus Flaccus ap. Hittorp. p. 50. See *Penance*, notes 30 and 80.

(227). Concil. Nic. A.D. 325, Can. 14 ap. Gratian I. Dist. XCIII. c. 14; Concil. Laodic. A.D. 363, Can. 25, *Ibid.* c. 16; Hieronym. *Ibid.* c. 24; Concil. Ebor. A.D. 1195, Can. 6; Const. 1 Langton, A.D. 1222, quoted note 225; Const. 12 Edmund, A.D. 1236.

(228). Stat. Eccl. Ant. A.D. 505, Can. 38 ap. Gratian I. Dist. XCIII. c. 18; Concil. Arelat. II. A.D. 443, Can. 15. See *The Eucharist*, § 6.

(229). Apost. Const. VIII. 46; Concil. Arelat. A.D. 314, Can. 15: Because we understand that in many places deacons offer, it is decreed that this ought not to be done. Concil. Ancyran. A.D. 314, ap. Gratian I. Dist. l.

can neither give the greater nor the lesser blessing (230), but in a private house he may bless both meat and drink (231). In the absence of a presbyter he can also withhold communion from a subdeacon, a reader, or a layman (232).

35. Brought into close relations with the bishop from the very nature of their duties (233), and having at Rome (which in this matter set the example to the Western Church) each one the entire parochial charge of one of the city wards, which were limited in number to seven (234) however many

c. 32, says that a lapsed deacon ought not to offer. Concil. Nic. A.D. 325, Can. 18, says that deacons have not the power of offering. Concil. Agath. A.D. 506, Can. 43, *Ibid.* Caus. XXVI. Qu. VI. c. 3: Let not a restored deacon [hujusmodi—the whole canon referring to penitents] presume to minister. Urban III. in Decret. Lib. V. Tit. XXVIII. c. 2, orders a deacon to be suspended for two years for having presumed to make the offering.

(230). Apost. Const. VIII. 46. The greater or triple benediction is the bishop's prerogative, the lesser the presbyter's, according to Gallican use. Concil. Brac. I. A.D. 563, Can. 3, introduced into Portugal the Roman practice, which required bishops and presbyters to use the same form.

(231). Theodori Poenit. II. II. 16, in H. & S. III. 192.

(232). Apost. Const. VIII. 28: A deacon does not bless, does not give the blessing [*i.e.*, the greater or triple blessing, and the simple blessing, or imposition of hands], but receives it from the bishop and presbyter. He does not baptize, he does not offer; but when a bishop or priest has offered, he distributes to the people, not as a priest, but as one that ministers to priests. . . . A deacon separates a subdeacon, a reader, a singer, and a deaconness, if there be any occasion in the absence of a presbyter. It is not lawful for a subdeacon to separate any, nor for a reader, a singer, or a deaconness, for they are the ministers to the deacons.

(233). Apost. Const. II. 30, 31, 44; Clement Ep. I. c. 12, ap. Gratian I. Dist. XCIII. c. 6.

(234). According to Publius Victor ap. Migne XVIII. 437, Rome was divided by Augustus into fourteen wards (regiones). But for ecclesiastical purposes it appears at first to have been divided into seven only. The Liber Pontificalis refers the division to Clement, and states that Evaristus (A.D. 100-108), "Titulos (Churches) in urbe dividit presbyteris et septem diaconos ordinavit. It may be traced back to the time of Fabian, A.D. 244, since Cornelius, his successor (in Euseb. VI. 43), mentions seven deacons in his time, A.D. 252. It has been supposed that the seven deacons in the Church of Jerusalem were respectively charged to look after the Greek-speaking Jews in Cappadocia, Pontus, Asia, Phrygia, Pamphylia, Rome and Crete,

titular Churches the city might contain (235), deacons became very important persons, and frequently declined the presbyterate (236). They even objected to discharging their ceremonial duties in the Eucharistic service, unless the service were conducted by the bishop in person, and otherwise conducted themselves as the superiors of presbyters (237). At their head was the archdeacon, who, in many cities, was elected by themselves from their own number; and he being constantly called upon to represent the bishop in dealing with other Churches, rose to a great hierarchical position (238). His ecclesiastical and ministerial functions were in consequence gradually abandoned or deputed to others, such as the precentor and treasurer, and he became, under the territorial system, an independent ordinary and deputy-bishop over the non-titular or parochial clergy (239).

which constituted the original branches of the Church of Jerusalem. Concil. Neocaesar. A.D. 314, Can. 14, l. c. 12: According to rule there ought to be seven deacons.

(235). Publius Victor l. c. mentions 10 basilicae at Rome which were constituted by Marcellus baptismal Churches. In the 4th century there were 25 tituli according to Duchêsne. The number was increased to 28 in the 12th century.

(236). Gelasius, A.D. 494, ap. Gratian 1. Dist. LXXIV. c. 9, permits subdeacons to be promoted to the presbyterate in case of such refusal. At Rome and in other cities before the 12th century it was usual to elect the bishop from the deacons rather than the presbyters. To prevent such refusal subdeacons were usually ordained deacons and presbyters on the same day. Duchêsne 314.

(237). Concil. Nic. A.D. 325, Can. 14 ap. Gratian I. Dist. XCIII. c. 14; Concil. Laodic. A.D. 363, Can. 20, *Ibid.* c. 15; Hieronym. *Ibid.* c. 24, forbid deacons to sit in the presence of presbyters. Gelasius *Ibid.* c. 13, directs them to know their place. Gregory, A.D. 598, *Ibid.* c. 21, forbids all but Roman deacons to wear sandals (καμπαγαί). Duchêsne 380; Concil. Tolet. IV. A.D. 633, Can. 39, *Ibid.* c. 21: The arrogance of some deacons goes so far that they place themselves before presbyters, and presume to occupy the first row (chorum), presbyters being placed in the lower row.

(238). Syn. Trull. A.D. 692, *Ibid.* c. 26: Let not a deacon, whatever be his dignity, sit before a presbyter, except he is deputed by his patriarch or metropolitan to occupy his place in some gathering.

(239). Duchêsne Lib. Pont. 157, observes that *parochia* is never applied

36. In the non-collegiate parochial Churches of the Middle Ages no provision was made for a deacon, such foundations being regarded as private oratories appurtenant to the cathedral or some other collegiate Church. In collegiate Churches the treasurer usually looked after the temporalities, and the precentor had charge of the conduct of the services. The diaconate consequently fell into abeyance as a ministerial order having functions to discharge in solemn worship, and now only survives in the West as a stepping-stone to the presbyterate.

### The Subdiaconate.

37. The office of subdeacon appears to have been originally instituted to lighten the deacon's work in great cities. To comply with the rule which limited the number of deacons to seven however large a city might be (240), a lower grade of officers was instituted under the deacons called subdeacons (241), who in some parts of the Church were assisted by the still lower grades of collets (*ἀκόλουθοι*) or attendants (sequentes) (242),

to a city Church. Innocent I. distinguishes (1) tituli, or city Churches, (2) coemeteria, or suburban mortuary chapels, and (3) parochiae, or Churches in the country. See *The Diocese.*

(240). Apost. Const. VIII. 4; Clem. Hom. Ep. Clem. ad Jac. c. 12; Concil. Neocaesaren. A.D. 314, Can. 14 ap. Gratian I. Dist. XCIII. c. 12.

(241). Their introduction at Rome is attributed to Fabian, A.D. 236–250. In Euseb. VI. 43, Cornelius, A.D. 252, enumerates seven deacons and seven subdeacons at Rome. Cyprian, Ep. 23 and 32, A.D. 255, mentions subdeacons. Also Concil. Elib. A.D. 305, Can. 30, and Concil. Neocaesar. A.D. 314, Can. 10. Concil. Laod. A.D. 363, Can. 21 and 23, calls them *ὑπηρέται*, and forbids them to wear a stole or to enter the sanctuary; and Can. 25 ap Gratian I. Dist. XCIII. c. 16, forbids them to encroach on the deacons' function of giving the bread or blessing the cup. Isidor. de Offic. Eccl. II. 8: The Apostles or their successors appointed that in every Church there should be seven deacons holding a higher place than the rest (qui sublimiore gradu essent caeteris). In the Metz Order ap. Le Brun III. 582 (ed. 1777), the subdeacon is said to be ordained to minister to the altar under the deacon (qui sanctis altaribus subministret). Amalarius de Eccl. Offic. II. 11: The subdeacon is so called because he is under the deacon. They are consecrated to one mystery.

(242). Duchêsne 332 points out that Fabian, the predecessor of Cornelius,

and door-wardens. Considering its history, the subdiaconate may therefore be looked at under three aspects: (1) as an office of service under the diaconate; (2) as a holy order having ministerial or ceremonial duties to perform in the service of the altar; and (3) as a hierarchical order, being a step in the diaconate, and therefore a step towards the presbyterate.

38. As an office of service under the diaconate, one of the earliest duties of subdeacons was to stand at the doors and see that the different classes of penitents did not encroach on their allotted places (243). After the fourth century, the subdeacon came more and more into prominence as the representative layman, and as such took part in liturgical worship and the administration of the sacraments (244). Before the service commenced he carried up the book of the Gospel and placed it upon the altar (245). In the service he handed the paten and chalice to the deacon, who conveyed them to the altar. He

divided Rome into seven wards, each of which he placed under the charge of a deacon. As there were seven subdeacons and forty-two collets at Rome in 252 A.D., according to the letter of Cornelius in Euseb. VI. 43, he considers that to each ward was attached one subdeacon (subdiaconus regionarius) and six collets, making a group of seven assistant clergy besides the deacon for each ward. Cyprian Ep. 28, 3, calls them sequentes.

(243). Maskell Mon. Rit. II. p. 191; Concil. Laodic. A.D. 363, Can. 22 orders the subdeacon not to leave the doors. Dionysius Eccl. Hier. c. 5 says that it is a duty of deacons (λειτουργοί) "to separate the unfit.' "Wherefore the hierarchical institution places them over the holy gates."

(244). Apost. Const. VIII. 28 says that the subdeacon, the reader, the singer, and the deaconess minister to the deacon. Concil. Narbon. A.D. 589, Can. 13, requires the subdeacon as well as the door-warden to lift up the curtain to admit their seniors in order to the Church. Can. 15 Elfric, A.D. 957: Subdeacon is plainly the under-deacon, he that brings forth the vessels to the deacons, and himself ministers under the deacon with the housel-vessels at the holy altar. Lacy's Pontifical, p. 83: Subdiaconum oportet praeparare necessaria ad ministerium altaris et diacono humiliter ministrare. Leo I. is by some said to have recognised the subdiaconate as a holy order in the West. From the Council of Laodicea it would appear to have already obtained this position in the East.

(245). Ordo Sti. Amandi ap. Duchêsne, p. 440.

took charge of the people's offerings of bread and wine as the bishop and archdeacon received them (246), and selected as much of them as was required for consecration for the deacon to prepare and place upon the altar (247). He held the water and towel for the bishop and deacon to wash and dry their hands with before the consecration (248), and, standing behind them, held the empty paten until the consecration-prayer was

(246). Isidor. de Offic. II. 10, 2: Subdeacons receive the oblations from the people in the Lord's temple. They are assistants to the office of Levites. They also present the vessels for the Body and Blood of Christ to deacons at the Lord's altar. Ordo Sti. Amandi ap. Duchêsne, p. 443: Then the pontiff comes down from his seat to receive the oblation-loaves from the people. . . . And as he receives them he hands them to a subdeacon, who places them in a corporal carried by two collets behind him. The deacons receive the wine-offerings, and the large chalice is carried by the subdeacon of the district, and the deacon empties the wine [as it is given him] into the large chalice. And when it is full it is emptied into the large bowl carried by collets. . . . Collets hold the corporal with the oblation-loaves, which the pontiff received from the people, at the right horn of the altar. And the subdeacon of the day (? temperita) chooses some from among them which he hands to the subdeacon of the district, who in turn hands them to the archdeacon who lays them out upon the altar in three or four rows. The information of Hugo de St. Victor, in Maskell Mon. Rit. II. 242: Subdeacons in the Lord's temple receive the people's offerings.

(247). In Leofric Missal, p. 213, the archdeacon addresses the candidate for the subdiaconate thus: The oblations which come to the altar are called the bread of presentation (propositionis). Of these oblations so much must be placed on the altar as will suffice for the people that none may remain over putrid in the vestry. The altar coverings over the under-napkin (pallae in substratorio) must be washed in one vessel, the corporals in another. That in which corporals have been washed must not be used for washing other things. The water must be poured away in the baptistry. Hugo de St. Victor l. c.: It belongs to subdeacons to place on the altar out of the offerings a quantity sufficient for the people of God. They must wash the corporals, altar-cloths, and under-napkins, and pour the water away in the baptistry.

(248). Isidor. ap. Gratian I. Dist. XXI. c. 11, § 14; Epist. ad Ludifred, *Ibid.* I. Dist. XXV. c. 1; Egbert's Pontifical (Surtees Society, vol. XXVII.): The subdeacon must read the Epistle, clothe and decorate the altar, and minister to the deacon. Christ was a subdeacon when He blessed water at Cana and changed it into wine.

concluded (249). After the communion he carried the empty vessels to the sacristy (250) and washed the altar linen (251).

39. As representative laymen subdeacons were admitted to office with considerable solemnity. In the Gallican Church they not only had delivered to them the instruments of office, the empty chalice and paten, but they also received a benediction, given without the imposition of hands, invoking upon them the sevenfold gifts of the Spirit (252), and their hands were anointed with holy oil (253). In the East they were ordained by the imposition of hands, but to indicate their character as representative laymen it was given to them outside the sanctuary (254). The duty of reading the Epistle in the service was also assigned to them (255), in token of which, since the thirteenth century, the book of Epistles is given to them at ordination. In consequence they were gradually treated as a hierarchical order. They were allowed to act as deputies for the Pope (256), and were held qualified for election to the episcopate.

40. Upon the disuse of solemn services in late mediaeval times, subdeacons, like deacons, were no longer required for ceremonial functions, and the care of temporal concerns was

(249). See Maskell's Ancient Liturgy, p. 86.

(250). Concil. Brac. I. A.D. 563, Can. 10; Concil. Martini A.D. 572, ap. Gratian I. Dist. XXIII. c. 32.

(251). Leofric Missal, p. 213, quoted note 247. The description of the subdeacon's duties is omitted in Lacy's Pontifical, p. 84.

(252). Leofric Missal, p. 213; Lacy's Pontifical, p. 84, call it consecration.

(253). Gelasian Sacramentary, p. 148 (622).

(254). See *Order*, § 13.

(255). Concil. Tolet. I. A.D. 400, Can. 4: [Let a criminous subdeacon] rank among door-wardens or readers, but without being admitted to read either the Epistle or the Gospel. Concil. Rem. A.D. 812, Can. 4: It is the subdeacon's office to read the Apostle. Amalarius, A.D. 829, Lib. II. c. 11, expresses his astonishment at subdeacons being allowed to read, "since this is not found to be part of the office committed to him at his consecration, nor [enjoined] by canonical rules, nor what his name implies." Micrologus, A.D. 1077, c. 8, makes the same reflection, and Durandus, A.D. 1286, Lib. II. c. 8.

(256). Gregory ap. Gratian I. Dist. XCIV. c. 1.

undertaken by a lower class of officials called ecclesiastical persons. In parochial churches synodsmen, now called church-wardens, presented the offering of the parish to the collet who acted instead of a deacon, and he in turn handed it to the priest. The subdiaconate still continued to exist in collegiate churches, but only as a degree in order and a stepping-stone to the presbyterate.

### The Duties of Non-Hierarchical Orders (257).

41. The highest of the non-hierarchical orders is that of acolytes, collets (258) or attendants (sequentes), a class of clergy peculiar to the Western Church, who, without ordination by the laying on of hands, are allowed to discharge some of the

(257). The duties of the several orders are set forth (1) in the Statutes of the Ancient Church, a mixed code for the Romanised Gallican Church, probably emanating from Arles at the beginning of the sixth century, ap. Gratian I. Dist. XXIII. c. 16 and 20; (2) by Isidore of Seville, assuming him him to be the author of the Epistle to Ludifred, which represents the Romanised Mozarabic use, *Ibid.* I. Dist. XXV. c. 1. Ludifred is otherwise unknown, but a bishop Leudificus signed the acts of the Fourth Council of Toledo, A.D. 633; (3) by Elfric, Bishop of Winchester, A.D. 957, Can. 11–14; (4) by Egbert's Pontifical, which represents the Anglo-Roman use adopted in the northern province about the eleventh century; (5) by various Pontificals, such as Lacy's, A.D.1450, ed. Barnes, which represents the use in the diocese of Exeter. Egbert says: Christ was a door-warden when He shut and opened the ark of Noe, and opened the gates of hell. Wherefore now those who are called door-wardens have charge of the doors of the Church and sacristy, and ring the bell to call all men to the Church. Christ was a reader when He opened the book of Esaias the prophet. He was an exorcist when He cast the seven devils out of Mary Magdalene. He was a subdeacon when He blessed water at Cana, and changed it into wine. . . . He was a deacon when He broke the loaves to feed the multitudes, and washed the feet of His disciples. . . . He was a priest when He took bread and the chalice into His sacred hands, and looking up to heaven, to God the Father, blessed them and gave thanks. . . . Christ was a bishop when, raising His hands, He blessed His apostles before His Ascension.

(258). Cyprian, Ep. 27 (Oxf. 34), 3, mentions Favorinus, a collet, Ep. 35 (Oxf. 7), Naricus the collet. Const. I. Gray, A.D. 1250. Ἀκόλουθοι or sequentes in ordo Sti. Armadi ap. Duchêsne Devoti Lib. I. Tit. II. § 30.

lower duties of the diaconate, such as, (1) assisting the bishop in temporal matters, (2) assisting deacons in the solemn ceremonies of the Church, and (3) assisting presbyters, in place of deacons, in non-solemn and private consecrations. In the Roman Church in the third century collets were more numerous than any other order, there being no fewer than forty-two of them, and it seems probable that six were told off for the service of each of the seven diaconal districts (regiones) (259).

42. The Roman collets in mediaeval times were divided into three classes, according to the three kinds of duties which they were called upon to perform. Some were collets of the palace, and attended on the pontiff at his residence, and conveyed his directions to the clergy and people (260). Others were collets of stations, and discharged ceremonial functions under the deacon and subdeacon at stational or solemn Eucharists when these were celebrated in the different Churches of the city (261). Others again were district or ward-collets, and within the wards to which they were attached performed the indispensable parts of the deacon's duties at the non-solemn Eucharists of titular presbyters (262).

43. Collets appear to have been introduced in the Cisalpine Church chiefly for the purpose of assisting deacons in the solemn service, and their duties are declared to be threefold, viz., (1) to prepare and light the lights in the sanctuary, (2) to hand the

(259). Cornelius in Euseb. VI. 43 ; Duchêsne 332.

(260). Devoti, l. c.

(261). Martinus ap. Gratian I. Dist. XXIII. c. 32, says a collet may handle the sacred vessels in the vestry, but not in Church.

(262). Devoti, l. c. Alexander III. to Bishop of Exeter in Decret. Lib. I. Tit. XVII. c. 6 : A priest alone cannot perform the solemnities of masses without the suffrage of an assistant. John the Deacon's Ep. ad Senarium 10 in Migne Pat. LIX. 405 : Collets differ from exorcists in this respect, that exorcists are forbidden to carry the sacramental signs and to minister to priests, and are wholly devoted to laying on of hands [on exergumens], or doing other things which fall within the province of exorcists. But collets undertake to carry the vessels with the sacramental signs, and are charged with ministering to priests. Therefore an exorcist can become a collet, but a collet cannot be moved down to the office of exorcist. Duchêsne, p. 332.

water and the wine for the offering together with the chalice to the subdeacon (263), and (3) to hold the ceremonial candle whilst the Gospel is being read and the oblation hallowed and at other appointed times, in honour of Christ Who is the true light (264). Collets are accordingly known as candle-bearers (ceroferarii) (265). At private consecrations they also discharge those parts of the deacon's duties which the priest can not discharge single-handed, and in this capacity are known under the parochial system as parish clerks (266). As such, in parochial Churches they hand to the priest not only the water and the wine but also the Eucharistic bread, which, by the rule of the thirteenth century, is provided by the parish (267). They say the responses, invite to prayer and praise, and generally wait on the priest in all his ministrations. To qualify them for these higher duties collets were in mediaeval times ordained with three solemn benedictions, and were said to be consecrated to their office (268).

44. The power of exorcising evil spirits was, in early times, held to be the first exercise of active discipleship, and as such

(263). Epist. ad Ludifred ap. Gratian I. Dist. XXV. c. 1, § 3; Lacy's Pontifical, A.D. 1450, p. 81: Acolitum oportet ceroferarium ferre et luminaria ecclesiae accendere, vinum et aquam ad Eucharistiam ministrare.

(264). Elfric Can. 14, A.D. 957; Maskell Mon. Rit. II. 182. See *The Eucharist*, note 134.

(265). Isidor. de Orig. Off. XIV. 1; Concil. Aquisgran. A.D. 806, Qu. 3; Information of Hugo de St. Victor ap. Maskell Mon. Rit. II. 241: Acolyti Graece, ceroferarii dicuntur Latine.

(266). Edgar's Law 35, A.D. 960: Let no priest celebrate mass alone without one to make responses to him. Concil. Nannet. in Decret. Lib. III. Tit. l. c. 3: Let every presbyter in charge of a people have some cleric to sing with him, to read the Epistle and Gospel, one who is able to keep school and admonish his parishioners to send their children to Church to be instructed in the faith.

(267). Const. 3 Gray, A.D. 1250; Const. 27 Peckham, A.D. 1279.

(268). Lacy's Pontifical, p. 83: Quos in officium acolitorum consecramus. Hugo de St. Victor says in his information, ap. Maskell II. 241: They receive an empty cruet from the bishop's hand, because they are not worthy to bear a full one, to show that they may touch the vessels of the temple, but are not yet prepared to administer the office of holy orders.

to be within the capacity of every Christian (269). Since, however, it required for its exercise prayer and fasting (270), it was early confined to a limited class of persons who were appointed to guard the spiritual temple of the Church from evil spirits, as the custodians guarded the Jewish Temple in the time of Ezra (271). The exorcist's duties were defined to be, (1) to commit to memory the forms of exorcism, and to lay hands on those possessed with evil spirits, whether baptized or unbaptized, (2) to call upon non-communicants to withdraw, and (3) to pour water in the baptismal service (272). Exorcists were an important order in preparing for and administering solemn baptism (273). With the decline of the catechumenate their office declined also, and their duties were usually discharged by collets (274). After the sixth century they are only met with in the West as a degree of probationers for the presbyterate (275). In the East, on the other hand, exorcism was always looked

(269). Mark XVI. 17; Tertullian de Idol. c. 11: With what consistency will [a Christian] exorcise his own foster-children to whom he affords his own house as storeroom. Origen contra Celsum VII. 67: By the use of prayer and other means we drive demons out of the souls of men. Cyprian ad. Donat. Ep. I. 5, A.D. 246: [After baptism] there is given power . . . to force to avow themselves the impure and vagrant spirits that have betaken themselves into the bodies of men, to drive them out with heavy blows. . . . The matter is carried on there, but it is not seen. The strokes are hidden, but the penalty manifest. *Id.* Ep. 75, 15, A.D. 255, ad. Magnum. de Spect. 4: He who in the Church exorcises demons, praises their delights in public shows. See *Baptism*, notes 54, 67.

(270). Math. XVII. 21: This kind goeth not out but by prayer and fasting. Mark IX. 29.

(271). Isidor. de Offic. II. 13, 3: Actores templi exorcistae sunt in populo Dei. Concil. Aquisgran. A.D. 806, Can. 4 repeats this.

(272). Stat. Eccl. Ant. l. c. c. 18; Epist. ad. Ludifred, l. c.; Lacy's Pontifical, A.D. 1450, p. 81: Exorcistae competit abjicere demones, et dicere populo qui non communicet ut dat locum, et aquam in ministerio fundere. Hugo de St. Victor ap. Maskell Mon. Rit. II. 240, says that the exorcist performs his office at the opening of the ears in the baptismal service. See *Baptism*, § 8.

(273). Isidor. de Offic. II. 21; Duchêsne 305.

(274). Ordo Romanus ap. Duchêsne 288.

(275). Duchêsne 89.

upon as an extraordinary supernatural gift (276), only it might not be exercised without the bishop's sanction (277).

45. Readers appear as a distinct order in the second century, having succeeded to the lower functions of the prophets' office (278) when bishops succeeded to the higher ones. Their business was (1) to read the prophetic Scriptures and the Psalms in the public assemblies (279), and also to interpret them;

(276). Apost. Const. VIII. 26: An exorcist is not ordained; Duchêsne 331.

(277). Concil. Laodic. A.D. 363, Can. 26 ap. Gratian I. Dist. LXIX. c. 2: Those who have not been put forward (*προαχθέντες*) by the bishops may not exorcise, neither at Church nor at home. Lynd. 244.

(278). Justin I. Apol. c. 65, mentions a reader. Tertullian de Praescript. c. 41; Teaching of Addaeus, p. 29, says the Apostles appointed deacons and elders in the villages, and instructed in them those who should read the Scriptures. In Apost. Const. VIII. 22 the spirit of prophecy is invoked in ordaining a reader. Isidor. de Offic. II. 11: The order of readers has its form and beginning from the prophets. So also Rabanus de Cler. Inst. I. 11; Albinus Flaccus, p. 70; Concil. Aquisgran. A.D. 806, Can. 3. Amalarius de Eccl. Offic. II. 8, considers the office a continuation of the *χάρισμα*, called the word of wisdom (1 Cor. XII. 8) or interpreting prophecy. In the Egyptian "Church Ordinances," c. 17, the reader ranks above the deacons, and is said to work the place of an evangelist. In the *Διδαχή*, XIII., the prophet, if he settles in a place, is to have the firstfruits, because prophets are Christian high-priests, out of which it is implied he would provide for the poor. Lacy's Pontifical speaks of the reader as a preacher, and blessing the firstfruits as being his duty. Information of Hugo de St. Victor ap. Maskell Mon. Rit. II. 239: Readers took their origin from the prophets.

(279). Cyprian Ep. 32 (Oxf. 38), 2, in announcing the ordination of Aurelius as reader, says: Nothing is more suitable for the voice which has confessed the Lord than to sound Him forth in the solemn repetition of the Divine lessons, and to read the Gospel of Christ, by which martyrs are made. *Id.* Ep. 33 (Oxf. 39), 4, says: He should read the precepts and Gospel of the Lord. Stat. Eccl. Ant. A.D. 505, l. c. c. 1; Epist. ad. Ludifred, l. c., § 5 and § 7: As the preaching of the Old Testament is committed to readers, so is that of the New to deacons. Concil. Laodic. A.D. 363, Can. 15 ap. Gratian I. Dist. XCII. c. 3, and Concil. Brac. II. A.D. 572, Can. 45, forbid any one to read from the ambon except he has been ordained reader. Theodori Poenit. II. I. 10, A.D. 673, in H. & S. III. 191: A layman may not read the lessons in Church [*i.e.*, prophesy, the Epistle and Gospel] nor say the Alleluia, but only the Psalms and responses without Alleluia.

(2) to act as custodians of the prophetical books; and (3) to bless the bread and all firstfruits (280). In the Church of Alexandria they were taken indiscriminately from among the baptized and catechumens (281). At Rome readership was the initial step in the clerical life (282) to which children might be appointed, because their voices carried further than those of adults in large churches (283), and the Roman readers were attached to particular titles (284). They were required to wear a clerical habit (285), and the Seventh Œcumenical Council ordered them to be ordained by the imposition of hands (286). When public readings from the prophets were dropped in the fifth century except upon a few rare occasions (287), the sole duty left to them was that of chanting the Psalms. The school

(280). Lacy's Pontifical, p. 96: It behoves the reader to understand what he reads, and to chant the lessons distinctly, and bless the bread and all firstfruits." The blessing of the firstfruits appears to be a survival of the prophet's right. Διδαχή XIII. 3: Therefore all the firstfruits . . . thou shalt take and give to the prophets, for they are your chief priests." The blessing of firstfruits now takes place by the bishop or priest in the canon at the words, Per quem haec omnia. Duchêsne 174.

(281). Socrates v. 22; Cyprian Ep. 26 (Oxf. 29), speaks of readers and catechists as not belonging to the clerical office.

(282). Duchêsne 334; Cyprian Ep. 32 (Oxf. 38), 2: Although his deserts merited higher degrees, I judged it well that he should begin with the office of reader.

(283). The Constitutum Sylvestri enumerates 90 at Rome. In 484 A.D. there were about 500 clergy at Carthage, inter quos quam plurimi erant lectores infantuli (Victor Vit. III. 34 ap. Duchêsne 335). Isidor. de Offic. II. 11, 5, says that a clear voice is requisite for a reader.

(284). Batiffol Histoire du Breviaire, p. 49.

(285). Concil. Brac. I. A.D. 563, Can. 11: Ut lectores in ecclesia habitu seculari ornate non psallant neque granos gentili ritu dimittant.

(286). Cyprian Ep. 32 (Oxf. 38), 2: This man has been ordained [reader] by me, and by my colleagues who were present. Syn. VII. A.D. 787, Can. 14 ap. Gratian I. Dist. LXIX. c. 1: Since we see that some who in tender years received the tonsure without the imposition of hands do, without the imposition of the bishop's hands, irregularly read the short lessons (collecta) on the reading platform, for the future we forbid this to be done.

(287). Duchêsne 336.

of readers was then merged in the school of singers (288), and the readership continued only as a probationary degree for the presbyterate.

46. In the Eastern (289) and the Gallican Church, singers continued as an order distinct from that of readers, their duties being to sing the canticles, processional anthem, offertory anthem, and the responses (290). Singers were, however, not ordained by a bishop, but only admitted to office by a presbyter without any solemn investiture (291), and their office was not included among the probationary degrees for the presbyterate, doubtless because they were chosen for their voices rather than their merits. On this ground they were forbidden at Rome to discharge any of the deacon's duties (292). The school of singers, which is often mentioned at Rome after the seventh century, is really the school of readers (293), who combined the singer's duty of singing parts of the service with the reader's surviving duty of singing the Psalms. Women and girls are not allowed to act as singers in Church (294).

(288). Schools of readers existed at Lyons in 552 A.D., and at Rheims *Ibid.* 335.

(289). Apost. Const. III. 11.

(290). Epist. ad Ludifred, I. c. § 4, mentions the benediction-canticle, *i.e.*, the Song of the Three Children or the *Benedicite*; the psalm; the hymn of praise, *i.e.*, a portion of the Cherubic hymn sung in the Spanish Church after the procession of the oblation [Isidor. de Offic. I. 13, 4, says: That is sung before and after the readings]; the offertory-anthem, and the responses.

(291). Stat. Eccl. Ant. Can. 10, A.D. 505, ap. Gratian I. Dist. XXIII. c. 20, quoted under *Order*, § 18, note 90; Concil. Brac. II. A.D. 572, *Ibid.* I. Dist. XCII. c. 3.

(292). Gregory *Ibid.* I. Dist. XCII. c. 2; Concil. Clovesho, A.D. 747, Can. 27: Psalmody is a divine work, a great cure in many cases for the souls of them who do it in spirit and with zest. But they who sing with voice without the inward meaning may make the sound resemble something . . . but the Psalms are to be sung with the inward intention of the heart.

(293). Duchêsne, p. 335.

(294). The synod which condemned Paul of Samosata, in 265 A.D., stated as one of the charges against him in Euseb VII. 30, that he employed women as singers. Concil. Turon. II. A.D. 551, Can. 4, forbids lay persons (including women) within the chancel. Concil. Autissiodor. A.D. 578, Can. 9, forbids girls to sing in Church. See *Order*, § 44; *The Sacraments*, § 17.

47. The lowest of the non-hierarchical orders is that of door-wardens (ostiarii). This order was introduced in imitation of the 4000 door-wardens of the temple in David's time (295), and is met with at Rome about the middle of the third century (296). Their duties were, (1) to open and close both Church and sacristy at proper times, (2) to take care of the vessels and ornaments of the Church, or, as it was expressed, to guard all that is within and without, and (3) to exclude excommunicates and unbelievers (297). Hence they received the keys of the Church on admission to office. In later times they were also required (4) to hold the book for the preacher or reader (298), and (5) to notify the times of service with the bells (299). After the sixth century their lower duties were at Rome committed to a new class of servants called hostillars (mansionarii) (300), and the doorwardens, who up to the time of Gelasius had been treated as servitors below the ranks of order (301), were constituted the first of the four probationary degrees.

### Orders of Women.

48. There existed in the early days of the Church several semi-clerical orders of women, one of which ranked next after deacons, and the two others next after confessors, and before all the simple orders of service (302). These are the orders of deaconesses, virgins, and widows.

(295). 1 Chron. xxiii. 5.

(296). Lib. Pontif. i. 155, mentions a door-warden (ostiarius), a companion of the martyred deacon Laurence, in 258 A.D.

(297). Epist. ad Ludifred, l. c. § 1; Information of Hugo de St. Victor ap. Maskell Mon. Rit. ii. 239 and p. 177.

(298). Lacy's Pontifical, p. 79: Ostiarium oportet percutere cymbalum, aperire ecclesiam, librum tenere ei qui praedicat.

(299). Elfric Can. 11, A.D. 957. The prayer in Leofric Missal, p. 211, is "that they may have a most faithful care, both day and night, to distinguish the hours for calling on the name of the Lord.

(300). Duchêsne 334.

(301). Gelasius, A.D. 494, ap. Gratian i. Dist. lxxvii. c. 8: Without knowledge of letters a man could hardly discharge the door-warden's duties.

(302). Apost. Const. viii. 24, 25.

49. The deaconesses of early times constituted purely an order of service, and had no share in the spiritual gift of the diaconate (303). They kept the doors in the portion of the church allotted for the use of women. They prepared women for baptism, and acted as assistants to presbyters and deacons in the baptizing of women (304). They visited women when sick, and were the agents through whom women addressed their communications to the bishop (305). Early rule required them to be pure virgins or widows who had only been once married (306), and not under forty years of age at the time of their appointment (307). Usually they were admitted to office by the imposition of the bishop's hands (308). If they afterwards married they were declared to be anathema (309). In

(303). Rom. XVI. 1 mentions Phœbe the deaconess. Ignat. ad Smyrn. c. 12: I salute the virgins who are called widows [*i.e.*, deaconesses]. Pliny, Epist. X. 97, mentions ministras (deaconesses). Apost. Const. VIII. 28: A deaconess does not bless nor perform anything belonging to the office of presbyters or deacons, but only is to keep the doors and to minister to the presbyters in the baptizing of women on account of decency.

(304). Apost. Const. III. 15: We stand in need of a woman, a deaconess, for many necessities; and first in the baptism of women the deacon shall anoint only their forehead with the holy oil, and after him the deaconess shall anoint them [*i.e.*, the rest of their persons, or the back and bosom], for there is no necessity that the women should be seen by the men; but only in the laying on of hands the bishop shall anoint her head; VIII. 28: [A reader and a deaconess] are ministers to a deacon. Thomassin Discip. de l'Eglise I. 1, 52; II. 1, 43.

(305). Apost. Const. II. 58.

(306). Apost. Const VI. 17: Let the deaconess be a pure virgin, or, at the least, a widow who has been but once married, faithful, and well esteemed. Tertullian ad Uxor. 1, 7: The Apostle suffers not men twice married to preside over a Church, when he would not grant a widow admittance into the order [of deaconesses] unless she had been the wife of one man. Devoti Inst. Lib. I. Tit. IX. § 22.

(307). Concil. Chalcedon A.D. 451, Can. 15.

(308). Apost. Const. III. 15; VIII. 19: Thou shalt lay thy hands upon a deaconess in the presence of the presbytery and of the deacons and the deaconesses and pray. Concil. Chalcedon, Can. 15: Let not a woman be ordained deaconess before she be forty, and that with strict examination.

(309). Concil. Chalcedon A.D. 451, Can. 15 ap. Gratian Caus. XXVII. Qu. 1. c. 23: If after ordination and continuance in ministration a deaconess

the fifth century the Roman rule of not ordaining deaconesses became general in the West (310). The term deaconess was also used in the Gallican Church to express the wife of a deacon, just as a presbyter's wife was called a presbyteress (311), and a bishop's wife a bishopess (312).

50. The orders of virgins and widows have, as such, no ministerial office in the Church. The order of virgins stands before the order of widows, because it is an order of self-sacrifice. It consists of those who have dedicated their virginity to Christ by a life-long vow (313), and are maintained like others on the roll of the Church out of its revenues (314). The entrance to this order is purely voluntary (315). Those who embrace it are not ordained like deaconesses (316), but are veiled or consecrated (317); and those who have once been entered on the roll of the Church as virgins (318), although not

marries, despising the gift of God, let both her and her husband be anathematised. Novellae *Ibid.* c. 30; Concil. Aurel. II. A.D. 533, Can. 17.

(310). Concil. Araus A.D. 444, Can. 26, forbids to ordain a deaconess; Concil. Epaon. A.D. 517, Can. 21, forbids widows to be ordained deaconesses; Concil. Aurel. II. A.D. 533, Can. 18: Let no woman in future receive the benediction of the diaconate. Concil. Turon. II. A.D. 567, Can. 20.

(311). Concil. Turon. II. A.D. 567, Can. 19; Autissiodor. A.D. 578, Can. 21; Devoti Inst. Lib. I. Tit. IX. § 23.

(312). Concil. Turon. II. Can. 13.

(313). See Methodius' Banquet of the Virgins. Cyprian de Vest. Virg. c. 4: [Virgins] have dedicated themselves to Christ, . . . and have vowed themselves to God as well in the flesh as in the spirit.

(314). Apost. Const. VIII. 30: Let the tithe be for the maintenance of the rest of the clergy and of the virgins and widows.

(315). 1 Cor. VII. 25; Rev. XIV. 4; Apost. Const. IV. 14: Concerning virginity we have received no commandment, but we leave it to the power of those that are willing as a vow. Isidor. de Offic. II. 18, 4.

(316). Apost. Const. VIII. 24: A virgin is not ordained.

(317). Isidor. de Offic. II. 19, 11, gives as the reason because they are excluded from participating in the gift of order, and veiling is an honorary distinction. Presbyters are forbidden to veil or consecrate them except when specially authorised. See above, § 25.

(318). Socrates I. 17 describes them as ἐν τῷ κανόνι, whence they are called canonical virgins. Devoti Inst. Lib. I. Tit. IX. § 21.

veiled or consecrated, are expected to keep their position (319), or otherwise to submit to penance for leaving it (320). Virgins are required to be not less than twenty-five years of age at the time they are veiled (321), except some special reason calls for their being veiled sooner (322), and to keep themselves holy in body and soul, "as the temples of God, the house of Christ, and the habitation of the Spirit" (323). They are forbidden to be gadders-about or double-minded, or to frequent the company of those of ill reputation (324), and are ordered to be treated

(319). Cyprian de Vest. Virg. c. 20; Concil. Tolet. I. A.D. 400, Can. 16 ap. Gratian Caus. XXVII. Qu. 1. c. 27: A consecrated virgin who falls into sin must not be received in the Church until she has done full penance, . . . but one who has married must not be admitted to penance unless she lives as a virgin, either during his lifetime or after his death. Innocent, A.D. 404, *Ibid.* c. 9, 10: Those who have given out that they would always remain in virginity, although they have not been veiled, ought to do penance if they afterwards marry, but those who spiritually espouse Christ and are ruled by the bishop (sacerdos), if they afterwards publicly marry may not be admitted to penance unless their husbands withdraw from the world. Augustin *Ibid.* c. 20; Hieronym. *Ibid.* c. 4 and 5: If a virgin marries she does not sin. But it is otherwise with a virgin who has dedicated herself to God. If one of these marries she has damnation, because she has made her first faith of none effect.

(320). Concil. Ancyr. A.D. 314, Can. 18 ap. Gratian Caus. XXVII. Qu. 1. c. 24, directs them to be treated as bigamists. Augustin *Ibid.* c. 41; Concil. Araus. A.D. 441, Can. 28: In either sex those who desert a profession of chastity must be looked upon as evaders of truth (praevaricatores), and all of these must be set right (consulendum) by lawful penance. Innocent I. A.D. 404, *Ibid.* c. 10; Theodori *Ibid.* I. Dist. XXVII. c. 3: If one who has a simple vow of virginity marries a wife, let him not afterwards put her away but do penance three years.

(321). Concil. Carthag. III. A.D. 397, Can. 4.

(322). Concil. Carthag. A.D. 418, Can. 18, in Codex Eccles. Afric. 126, says, to save them from being ravished. Concil. Turon. II. A.D. 567, Can. 20.

(323). 1 Cor. VII. 34; Apost. Const. IV. 14; Concil. Elib. A.D. 305. Can. 13 ap. Gratian Caus. XXVII. Qu. 1. c. 25, forbids such as allow themselves to be corrupted to receive communion in extremis. Concil. Tolet. I. A.D. 400, *Ibid.* c. 27, prescribes ten years' penance. Gregory *Ibid.* c. 15, 18, 28, requires them to embrace a stricter rule. Concil. Tribur. Can. 6, A.D. 895, *Ibid.* c. 11, orders them to be kept in laborious confinement.

(324). Apost. Const. IV. 14.

with respect, as being the Church's "altar of incense and the incense itself" (325).

51. The order of widows is an order of intercession rather than of sacrifice, and stands on a somewhat lower level (326). To this order, which is also entitled to be supported by the Church (327), only those who have been once married (328) and are over sixty years of age (329) are admitted. By the Greeks, widows were often called presbyteresses (330), and sometimes discharged the duties of deaconesses, but were distinguished from them as being unordained (331). Widows are required to be meek, quiet, gentle, not talkative, not given to evil-speaking, not busy-bodies (332), not putting themselves forward as teachers (333) or baptizers (334), but to be obedient to the bishop, and to presbyters, deacons, and deaconesses in all things (335). Widows are not ordained (336), nor are

(325). Apost. Const. II. 26: Let the widows and orphans be esteemed as representing the altar of burnt-offering, and let the virgins be honoured as representing the altar of incense and the altar itself. See *Baptism*, note 216.

(326). Apost. Const. VIII. 25.

(327). Acts VI. 1; 1 Tim. v. 12; Apost. Const. III. 3; VIII. 29; Stat. Eccl. Ant. A.D. 505, Can. 103.

(328). 1 Tim. v. 9: *ἑνὸς ἀνδρὸς γυνή*; v. 11: Refuse younger widows *ὅταν γὰρ καταστρηνιάσωσι τοῦ Χριστοῦ, γαμεῖν θέλουσιν· ἔχουσαι κρῖμα, ὅτι τὴν πρώτην πίστιν ἠθέτησαν.*

(329). Apost. Const. III. 1; 1 Tim. v. 9, requires them to be not less than sixty. Likewise Tertullian de Virg. Vel. c. 9.

(330). Concil. Laodic. A.D. 363, Can. 11, calls them *πρεσβύτιδες ἤτοι προκαθήμεναι*, for which Gratian I. Dist. XXXII. c. 19 substitutes, apud nos viduae, seniores, univirae (wives of one husband) et matricuriae (*i.e.*, matriculariae = those on the matricula or church-roll).

(331). Concil. Nic. A.D. 325, Can. 19: Those who are deaconesses in habit, having received no imposition of hands, shall be treated as laity. Duchêsne 329 regards widows and virgins as being those who are called deaconesses, but the 1500 widows at Rome mentioned by Cornelius, A.D. 251, in Eus. VI. 43, cannot have been all deaconesses.

(332). Apost. Const. III. 5.

(333). Apost. Const. III. 6.

(334). Apost. Const. III. 9.

(335). Apost. Const. III. 7.

(336). Apost. Const. VIII. 25; Concil. Laodic. A.D. 363, Can. 11 ap. Gratian I. Dist. XXXII. c. 19; Concil. Turon. A.D. 567, Can. 20.

they in the West veiled by a bishop (337), but after making a written profession (338) they veil themselves without any benediction (339). If they afterwards marry, they are ordered to be excommunicated (340). Their business is to pray continuously for those that give and for the whole Church (341),

(337). Concil. Rothomag. A.D. 650, Can. 9 ; Concil. Tribur. A.D. 895, ap. Gratian Caus. XXVII. Qu. l. c. 8 : Let no bishop dare to veil widows. Theodori Poenit. II. III. 7, A.D. 673, in H. & S. III. 193 : The Greeks bless alike a widow and a virgin, and choose either to abbess. The Romans do not veil a widow like a virgin (cum virgine).

(338). Concil. Araus. A.D. 441, Can. 27 ap. Gratian Caus. XXVII. Qu. l. c. 35 : The profession to preserve widowhood, made before a bishop in writing, may not be violated after the widow's garb has been assumed before the bishop. Concil. Tolet. IV. A.D. 633, Can. 56 : There are two kinds of widows, (1) secular and (2) hallowed (sanctimoniales). . . . Hallowed widows are those who, changing the secular habit, have appeared in a religious garb either before the bishop or in church. Concil. Tolet. X. A.D. 656, Can. 4 *Ibid.* Caus. XX. Qu. l. c. 16 : Let a widow who wishes to devote herself to religion make a profession in writing before a presbyter or deacon, stating her purpose and her intention of inviolately carrying it out. Then having received from the presbyter or deacon a habit suitable for the profession of religion, let her wear it night and day, nor let it be a distinguished garment, particoloured or with trimmings, but religious and giving no offence.

(339). Gelasius ap. Gratian Caus. XX. Qu. l. c. 11, A.D. 494, forbids a bishop to veil a widow ; also Martin. A.D. 572, *Ibid.* Caus. XXVII. Qu. l. c. 8 ; Nicolaus *Ibid.* c. 34, and I. Dist. XXVII. c. 6, speaks of a widow veiling herself. Gelasius *Ibid.* Caus. XXVII. Qu. l. c. 42 : We have already spoken of the veiling of widows without any benediction.

(340). Concil. Tolet. III. A.D. 589, ap. Gratian Caus. XXVII. Qu. l. c. 38 : If widows, before they profess continence, choose to marry, let them do so. But after the profession, 1 Tim. v. 11 says ἔχουσι κρῖμα. Stat. Eccl. Ant. A.D. 505, Can. 10, forbids any communion to be had with such. Augustin *Ibid.* Caus. XXVII. Qu. l. c. 33, says, "because of the breach of vow." Concil. Araus. A.D. 441, *Ibid.* c. 35 ; Gregory *Ibid.* c. 2 ; Concil. Paris V. A.D. 615, Can. 13 ; Concil. Worm. A.D. 868, *Ibid.* c. 34 ; Concil. Tolet. VI. A.D. 638, Can. 6, *Ibid.* Caus. XX. Qu. III. c. 2 ; Isidor. de Offic. II. 19, 5.

(341). Apost. Const. III. 5 : Let the widow mind nothing but to pray for those that give, and for the whole Church ; III. 7 : As Judith prayed to God night and day for Israel [Judith IX. 12], so also the widow who is like to her will offer her intercession without ceasing for the Church to

whence they are said to be affixed to the altar of Christ (342).

52. In the Middle Ages the orders of virgins and widows disappear from view under those names, but are found existing as cloistered nuns or uncloistered canonesses, whose duties will be mentioned under the subject of discipline. By Gallican rule, the widows of presbyters and deacons were strictly forbidden to marry again (343), and were expected to enter and had the privilege of being received into religious houses as canonesses. The same privilege and disability were enjoyed by the widows of reigning sovereigns in Spain (344).

## Ecclesiastical Persons.

53. In the times which followed the breaking-up of the Roman Empire and the hasty conversion of the northern nations, a large number of those who outwardly bore the Christian name and had received baptism, were not only careless in regard of Christian duties, but also indifferent to the exercise of Christian privileges. Those with whom it was otherwise, for the most part sought and obtained admission to the ranks of order, or else embraced the monastic life. Some few, nevertheless, retained their full position and privileges as laymen in the world; and these, in contrast to the clergy on the one hand, and to the mass of indifferent Christians, who practically were no better than probationer-catechumens, on the other, were termed ecclesiastical persons.

54. Properly, the term ecclesiastical persons is used to denote all who are members of the Christian ἐκκλησία, *i.e.*,

God. Stat. Eccl. Ant. A.D. 505, Can. 103 ap. Gratian I. Dist. LXXXI. c. 34: Widows who are supported by the Church ought continuously to pray for the Church. Concil. Worm. A.D. 868, *Ibid.* Caus. XXVII. Qu. I. c. 34, speaks of them as praying and making oblations.

(342). Apost. Const. III. 6: Let the widow, therefore, own herself to be the altar of God; III. 7: Such [unworthy] widows are not affixed to the altar of God. II. 26; Tertullian ad Uxor. I. 7.

(343). Concil. Autissiodor A.D. 578, Can. 22: It is forbidden to the widow of a presbyter, a deacon, or a subdeacon, after his death, to marry again. Concil. Matiscon. II. A.D. 585, Can. 16. See *Wedlock*, § 14.

(344). Concil. Tolet. XIII. A.D. 683, Can. 5.

the faithful generally (345). In the times of laxity referred to, it came to be confined to two classes of persons—(1) to those who were called religious persons, such as ascetics and confessors, monks and nuns, who openly professed and pledged themselves to pursue perfection (346); and (2) to various lay-officials of the Church (347), whose position made them amenable to discipline, and who were, therefore, presumed to be living according to ecclesiastical rule (348). The outward mark of both classes was the tonsure (349) and wearing the garb of

(345). Iren. Haer. III. 16, 2, A.D. 175 : The Valentinians call those who belong to the Church gild-members (*καθολικούς*, rendered communes) and ecclesiastical persons (*ἐκκλησιαστικούς* = members of the *ἐκκλησία*), therein imitating our phraseology.

(346). Joan. Damasc. de Confess. c. 11 says that the power of binding and loosing has passed from the high-priests to the elect people of God, to wit, the monks, because of the degeneracy of the priesthood.

(347). Concil. Chalcedon, A.D. 451, Can. 2, calls them *οἱ ἐν τῷ κλήρῳ*, and excludes from their number monks. Lynd. 85, 152, 191 ; Devoti. Inst. Lib. I. Tit. I. § 1 and 12.

(348). Const. 49 Langton, A.D. 1222 : Let no Churches be let to farm, but to one in orders, of whom it may be presumed that he will apply the fruits to good uses. Const. 8 Otho, A.D. 1237 : That Churches be not at all farmed to laymen nor to ecclesiastical persons for above five years. Const. 15 Peckham, A.D. 1281 : That Churches be not farmed but to holy and reputable ecclesiastical persons, whom the bishop may freely coerce. The statute 13 Eliz. c. 2, A.D. 1570, forbad such leases, unless the leasing incumbent were resident, or unless they were made by a dispensed pluralist to his resident curate. 43 Geo. III. c. 84 forbad them altogether.

(349). Morinus de Ord. Pars. III. Ex. 15, c. 3 contends that there never were any clergy who became such by the tonsure without being admitted to some degree of order. Mabillon Acta Sanct. in Praefat. ad Saec. 3, Vol. III. Pars. I., § 1, c. 19, contends that at an earlier time than Morinus imagines, the tonsure was separate from order. In the sixth century, Greg. Tur. Hist. Franc. Script. I. 303 relates : Propria manu capillos incidens clericus factus est, which may be explained by Concil. Tolet. IV. A.D. 633, Can. 55, which speaks of secular persons embracing a life of penance [as monks], and giving themselves the tonsure. Whence it is seen that tonsured persons were at first only monks. Baeda III. 5 contrasts shorn monks with laymen. Honorius III., in Decret. Lib. III. Tit. II. c. 10, lays it down that one who has received the tonsure only is not bound to wear the clerical habit, if he takes arms.

religion; and it was held to be an essential qualification for the tonsure that the candidates should be literate persons (350). Canonists hold that the tonsure is a deputation towards receiving spiritual power, a prelude to orders, which separates from the state of conventional lay life, and that consequently all tonsured persons whether monks or clerks are an order (351). Theologians refuse to allow to them this position (352), on the ground that they belong to neither of the two orders of intercession or of service, and are only a section of the third order of laymen.

55. As hospitality to poorer members of the One Body is a fundamental duty of Christians, so it was always deemed to be a peculiar obligation of the Church to provide for the necessities of religious persons. Hence confessors (353) and ascetics, who had sacrificed themselves for the glory of God and the enlightenment of the world, were in former times placed on the roll of the Church in large cities and maintained by it. Under the system of foundations of mediaeval times, the religious, *i.e.*, monks and nuns, were endowed with tithes and landed estate as property given to God (354), and

(350). Gelasius, A.D. 494, ap. Gratian I. Dist. LXXVII. c. 8: Without letters he can scarcely discharge the door-warden's office. Boniface VIII. in Sext. Lib. I. Tit. IX. c. 6.

(351). Relying on Innocent. III. in Decret. Lib. I. Tit. XIV. c. 11: Since it sometimes happens that laymen taking refuge in monasteries receive the tonsure from their abbots, and you inquire whether the clerical order is conferred by such tonsure, we answer [referring to Syn. VII. ap. Gratian I. Dist. LXX. c. 1] that the clerical order is bestowed by the first tonsure given according to the form of the Church.

(352). Relying on Boniface VIII. in Sext. Lib. I. Tit. IX. c. 4: Let no bishop or other person presume to bestow the clerical tonsure on an infant, unless he join a religious order, or on an illiterate person, or on the subject of any other bishop without his superior's leave, nor on a married man, unless he desires to enter religion or to be promoted to holy orders.

(353). Apost. Const. VIII. 13; Cyprian Ep. 36 (Oxf. 12): Manifest all care for those who with a glorious voice have confessed the Lord. . . . Let no consideration be wanting.

(354). Concil. Paris A.D. 829, Can. 16 ap. Gratian Caus. XVI. Qu. I. c. 68: Since all that the clergy (clerici) have belongs to the poor, and their houses should be open to all, they ought to be ever ready to receive strangers

tonsured clerks were permitted to receive ecclesiastical dues, and to be temporary lessees of ecclesiastical property. Thus, in an age when the higher clergy were often given to covetousness, the principle was vindicated that it is a duty of the faithful to make provision, not only for the clergy but for all their poorer brethren in need (355) who faithfully live a Christian life.

56. The various lay officials of the Church, who are now comprised under the designation of ecclesiastical persons, include—(1) the property-stewards, or administrators (356) of bishops, and, in later times, of incumbents also, who, when the leasing of ecclesiastical benefices was allowed, were accounted fit persons to hold such leases (357); (2) the judges in ecclesiastical courts (358), who discharged the judicial duties once exercised by the whole body of the faithful in common with their rulers (359); (3) the hostillars, or house-stewards, who presided over the guest-houses of the Church, and, more particularly, the order of that name which had charge of the guest-houses of the Church in the Holy Land; (4) the military retainers of the Church, who protected Churches amid dangerous surroundings, and safeguarded pilgrims from brigands, such as the order of the Templars; and (5) the various secretarial officers—archivists, registrars, notaries, and others—who kept the acts and roll of members, and the judicial records (360).

57. Unless otherwise bound to continency, as monks are,

and guests. Their greatest care should be to supply from their tithes and offerings as large a maintenance as they will and can to monasteries and guesthouses. It is, therefore, permitted (liberum est) to grant tithes and oblations and penance-dues (remedia) to monks and spiritual men who fear and worship God, and to transfer them from private hands to their dominion and use, not regarding poverty so much as religion among the poor. See *The Parish*.

(355). Synod Rem. A.D. 502, ap. Gratian I. Dist. XCVI. c. 10, § 3; Pseudo-Hieronym. *Ibid.* I. Dist. XCIII. c. 23, § 5.

(356). Οἰκονόμοι, in Concil. Chalcedon, A.D. 451, Can. 2; Lynd. 152.

(357). See above, note 348.

(358). See *The Diocese*.

(359). 1 Cor. v. 4. See *Order*, note 19.

(360). See *The Diocese*.

or holding certain judicial offices (361), ecclesiastical persons are not under restraint in respect of marriage (362). They are, however, subject to ecclesiastical discipline (363), and are forbidden to be admitted to spiritual benefices which have a cure of souls (364). In this country, custom based upon civil legislation, now exempts even judicial officers of the Church who control the clergy from matrimonial disabilities, provided they have graduated in the science of canon law (365).

(361). Const. 2 Chichele, A.D. 1415.

(362). Concil. London, A.D. 1175, Can. 1: Any under subdeacons must keep their wives if they are married, unless by mutual consent they choose to be religious. Alexander III. to Archbishop of Canterbury and Bishop of Hereford, in Decret. Lib. III. Tit. III. c. 1 and 2.

(363). Const. 19 Boniface, A.D. 1261; Const. 15 Peckham, A.D. 1281: Ecclesiastical persons whom the bishops may freely coerce. Lynd. 221, 152, 352.

(364). Concil. Westminster A.D. 1200, Can. 14; Devoti Lib. I. Tit. I. § 12.

(365). 37 Hen. VIII. c. 17.

# VII.

# WEDLOCK.

## Christian and Legal Wedlock.

1. Among laymen those who are married constitute a separate rank or estate which is recognised as having distinct duties of its own, and to which solemn admission is given in the Church. This estate is termed the conjugal or wedded order (1), and its members are said to hold a position of united life initiated by mutual consent and endowed with a spiritual grace. Wedlock is, however, of two kinds: (1) carnal, and (2) spiritual. Carnal wedlock is a position of united life in which the instinct connecting the sexes is brought under the rule of Christ and acquires definiteness and sanctity, whereby it becomes a means of grace and a safeguard against sexual sin. Spiritual wedlock is a position of united life in which the spiritual relationship between a prelate and his Church is hallowed for the edification of both.

2. Carnal wedlock or matrimony, sometimes called the sacrament of the imperfect (2), is at once—(1) a natural relation, the end of which is offspring (*proles*), (2) a civil relation or contract (*fides*), and (3) among Christians a spiritual relation elevating and hallowing the other two (*sacramentum*) (3). As a natural

(1). It is called ordo conjugalis, Gratian I. Dist. XVI. c. 11; ordo conjugatorum by Gregory. See *Order*, § 1.

(2). Const. 9 Peckham, A.D. 1281: There are two other sacraments, order and wedlock. The first is proper for the perfect, the other, in the times of the New Testament, to the imperfect only. Lynd. 44; Clement Alex. Strom. II. 23: Whether we ought to marry or not is one of the points which are said to be relative.

(3). Augustin ap. Gratian Caus. XXVII. Qu. II. c. 10: The whole benefit of nuptials was fulfilled in the parents of Christ—offspring, fidelity, life-long companionship (proles, fides, sacramentum). We know they had Christ as offspring; there was fidelity because there was no adultery, and

relation, it is the marital coupling of man and woman for the sake of offspring (4); as a civil relation, it is a tie or obligation of fidelity, which by the law of the state the married incur to one another so long as the contract subsists (5). The marital coupling and the obligation of fidelity together constitute yoke-fellowship (conjugium) or the state of wedlock. As a spiritual relation among Christians it is a yoke-fellowship for life founded upon divine grace (6), which by the sanctity attached to the plighted troth (sacramentum) (7), and the limitation of the

lifelong companionship because there was no separation, *Ibid.* Caus. XXXII. Qu. I. c. 11: Some things belong properly to nuptials, by which nuptials are distinguished from concubinage [adulteria in the generic sense], such as fidelity to the conjugal bed, the care of procuring children in due course, and (what is the greatest difference) the good use of an evil thing, *i.e.*, the good use of the desire (concupiscentia) of the flesh, which good use libertines abuse. See Methodius' Banquet of the Virgins, Dist. II.; Isidor. de Offic. II. 20, 10: By fidelity is understood being true to one another; by offspring, that it be lovingly undertaken and chastely brought up; by sacrament, that the union be not broken or any fresh union entered upon for the sake of offspring. Thom. Aquin. in 4 Dist. 26 Qu. 2 Arg. 2: Matrimony was instituted for a natural purpose in man's first estate of innocence. It was appointed to be a remedy against sin in the estate of fallen nature. Under the new law it was appointed by Christ to be a sacramental sign. Ayliffe 360.

(4). Ambros. ap. Gratian Caus. XXXII. Qu. II. c. 1: It is sad for women not to have the reward of nuptials [*i.e.*, offspring], to whom this is the one reason for marrying. Since the reward of wedlock and the grace of nuptials for women is to bear children, it is no wonder that the virginity of Mary deceived the world.

(5). Augustin *Ibid.* c. 3: Married people owe one another not only sexual fidelity for the sake of producing children, but also mutual submission for the sake of bearing with one another's infirmities to avoid illicit embraces.

(6). Innocent, A.D. 404, ap. Gratian Caus. XXXIV. Qu. I. c. 2, calls it conjugium gratia divina fundatum. Tertullian ad Uxor. c. 8: Whence are we to find words to tell the happiness of marriage which the Church cements, the oblation confirms, the benediction seals, angels announce, the Father holds ratified? Liebermann VI. 899.

(7). Augustin de Bono Conjugali c. 24: The good of marriage amongst all nations and all men is [1] the procreation of children, and [2] fidelity; but amongst God's people it is also [3] the sanctity of the plighted troth

marital coupling to one person (8), becomes a visible representation (sacramentum) of the union betwixt Christ and His Church (9). If a position of united life is entered upon for other purposes than the sake of offspring (10), still the character of sacramental wedlock cannot be denied to it, provided it is (1) a union between Christians, (2) is undertaken for life and not for temporary lust, and (3) there is no desire to escape from the natural consequences of wedlock (11).

3. In regular course Christian wedlock is entered upon by two acts (12)—(1) the promise of marriage or betrothal, and

(sacramenti sanctitas), which makes it a crime (nefas) to divorce one and marry another during her lifetime. *Id.* ap. Gratian l. c. c. 5 : Concubines taken for a time, even if the object is the procreation of children, do not make concubinage lawful (justum).

(8). Clement Alex. Strom. II. 23 ; Gratian Caus. XXVII. Qu. II. Init. : Viri mulierisque conjunctio individuam vitae consuetudinem retinens, the latter words representing the Christian addition to a natural relation. Ayliffe 359 ; Devoti Lib. II. Tit. II. § 102 ; Liebermann VI. 884 ; Perrone Praelect. 297.

(9). Eph. v. 25, 32.

(10). Lynd. 273 mentions as secondary goods contemplated by marriage, bringing kindred spirits together, the acquisition of money and friends, the settlement of feuds.

(11). Augustin *Ibid.* c. 6 : The question is sometimes asked whether, if two unmarried persons come together, not for the purpose of begetting children but only from incontinence, pledging mutual fidelity to one another, such a relation can be called marriage (nuptiae). It may indeed not improperly be called a state of marriage (connubium a marriage allowed by law), if, (1) it is agreed that it shall continue to the death of one of the parties, and (2) they have not avoided the begetting of children, although they have not been united for that purpose, so that they are not unwilling that issue should be born, and have taken no unlawful means to prevent issue being born. But if one or both of these [conditions] are wanting, I do not see how such a union can be called marriage (nuptiae). Gregory IX. in Decret. Lib. IV. Tit. V. c. 7.

(12). Augustin ap. Gratian Caus. XXX. Qu. V. c. 4 : A proper and lawful wife should be a chaste virgin—[1] betrothed in her virginhood, lawfully endowed, given by her parents to the bridegroom, and received at the hands of her bridesmaids, and [2] according to the law and the Gospel she should be taken to wife by public nuptials, and all the days of her life never be separated from her husband except by consent for prayer,

(2) the act of marriage or the nuptials. The betrothal (13) or desponsation (14), called also the espousal *de futuro* (15) or conjugal

and she shall be dismissed if she prove untrue, but none other be wedded during her life. Pseudo-Isidor. *Ibid.* c. 1 : Marriage is not lawfully entered upon unless—[1] the wife is asked for at the hands of those who have the charge and custody of her, and is betrothed by her parents and friends, and endowed according to law, and [2] in proper time blessed with the priest's blessing, with prayers and oblations, as is the custom, and being asked for at the hands of her friends at the proper time is given away according to law and solemnly received, and both bride and bridegroom devote themselves to prayer for two or three days, and preserve chastity. Concil. Turon. II. A.D. 567, Can. 20 ; Nicolaus *Ibid.* Caus. XXXI. Qu. II. c. 4.

(13). Ancient Form of Espousal, A.D. 946, in Johnson : If a man will marry a maid, and she and her friends so please, then it is fit that the bridegroom, according to God's law, do—[1] first covenant and promise with him that acts for her that he desires to have her on condition to retain her according to the divine right as a man ought to retain his wife ; and let his friend give caution for that. Then let it be known who is bound to maintain them, and let the bridegroom promise this and afterward his friend. Let the bridegroom declare with what he endows her if she outlive him. . . . Let him finish all with a pledge of his promise, and let his friend be surety for it. If they are agreed as to all the particulars, then [2] let the kindred take their kinswoman and wed her to him that wooed her for a wife and an honest life, and let him that was principal in making the match take surety to this purpose.

(14). Desponsatio is used of a promise to marry at a future date, by Hieronym. ap. Gratian Caus. XXVII. Qu. II. c. 13 : A man whose wife is dead may marry another, provided she be not divorced or betrothed (desponsata) to another. Gregory *Ibid.* c. 12 : Let him who marries the betrothed girl of his neighbour be anathema . . . not one who was his wife, but one who ought by her parents' gift to become his wife. Gregory *Ibid.* c. 14 : If any one has betrothed himself or given an engagement pledge (subarrhaverit) to a wife, let none of his close kindred marry her, although he was prevented by death from marrying her. Theodori Poenit. II. XII. 33, in Haddan and Stubbs III. 201, and *Ibid.* c. 27 : Parents may not give a betrothed girl to another, unless she resolutely refuses [to wed her betrothed], but she may, if she will, enter a nunnery. Concil. Tribur. A.D. 895, *Ibid.* c. 31.

(15). Lynd. 271 : The espousal is the promise of future nuptials, but the nuptials or matrimony is the marital coupling of man and woman, retaining the individual habit thereof for life.

pact (16), and sometimes the wooing (17), or in Roman times veiling (18), is an agreement entered into before witnesses (19) by or on behalf of two persons (20) not disqualified from contracting, whereby they pledge themselves to proceed to actual marriage at a future date. Formerly betrothal was made solemnly by oath, and was followed by the priest's blessing (21); but solemn betrothal as a separate act has long been obsolete in this country, and now only exists as the preliminary part of the marriage service. The publication of the intention to marry, or as it is usually termed banns, is, however, required as a preliminary (22), in order to ascertain (1) that no canonical

(16). Augustin ap. Gratian Caus. XXVII. Qu. II. c. 51, distinguishes—[1] the pactio conjugalis from the [2] consensus which constitutes matrimony. If any one has *contracted* to marry a woman he ought not to wed another. If he does, he ought not to put the other away, but to do penance for a breach of contract. But if he has *solemnly consented*, he may not marry another, and if he does must put her away.

(17). Augustin ap. Gratian Caus. XXVII. Qu. II. c. 39: It is appointed that such as are betrothed be not married at once, lest the husband think little of the wife whom he has not longed for (suspiraverit) with delay. Concil. Paris III. A.D. 557, Can. 5, calls this courtship (competitio). Ancient Form of Espousal, quoted note 13, calls it wooing.

(18). Pelagius ap. Gratian I. Dist. XXXIV. c. 20, says velata non tamen ei nupta.

(19). Concil. Westminster A.D. 1102, Can. 22: That promises of marriage made without witnesses be null if either deny them.

(20). Const. 30 Edmund, A.D. 1236: They who give girls to boys in their cradles do nothing, except both consent when they come to years of discretion [*i.e.*, fourteen and twelve respectively].

(21). Siricius ap. Gratian Caus. XXVII. Qu. II. c. 50.

(22). Concil. Westminster A.D. 1200, Can. 11, orders that no marriage shall be contracted without banns thrice published in the Church. Concil. Lat. IV. A.D. 1215, Can. 51, in Decret. Lib. IV. Tit. III. c. 3, requires the publication of marriages about to be contracted for this object. Const. 7 Reynolds, A.D. 1322: Let the priests while the marriage is contracting interrogate the people, under pain of excommunication, by three public banns concerning the immunity of the bridegroom and the bride on three Lord's days or festivals distant from each other. If the priest neglect these banns, let him not escape the punishment lately enacted in the general council. And let priests often forbid such as are disposed to arry to plight their troth anywhere but in some notable place before

impediment exists to a valid marriage (23), and (2) that those legal consents have been obtained without which the ensuing marriage would be civilly invalid (24).

4. To effect a solemn betrothal, an engagement-gift is required as a pledge (25), and also the consent of parents (26). Children under seven years of age ought not to be betrothed, except for some overwhelming necessity (27); but if they are betrothed, either of them may repudiate the engagement on reaching adult years, *i.e.*, a boy when he is fourteen, a girl when she reaches her twelfth year (28). If

priests and public persons called together for this purpose. Const. 8 Mepham. A.D. 1328, directs priests to be suspended for three years who marry any without publishing their banns, except by the bishop's license. Const. 11 Stratford, A.D. 1343; Const. 7 Zouche, A.D. 1347.

(23). Such as (1) having acted as sponsor at baptism, or having held the baptized at confirmation, (2) being related within the fourth degree, (3) having promised marriage to any other person, (4) having taken a vow of religion. See authorities ap. Gratian Caus. XXVII. Qu. I. and below, § 15.

(24). Concil. Aurel. IV. A.D. 541, Can. 24, requires the master's consent to make the marriage of a slave lawful, but if he marries without consent the marriage is still good. Concil. Paris III. A.D. 557, Can. 6, forbids a man to marry either a maid or a widow unless his relatives consent. Adrian in Decret. Lib. IV. Tit. IX. c. 1. Marriages without relatives' consent are valid according to Concil. Trident. Sess. XXIV. c. 1, and 32 Hen. VIII. c. 38 and 33 Hen. VIII. c. 6.

(25). Pseudo-Isidor. ap. Gratian Caus. III. Qu. IV. c. 4: Any one who is not lawfully coupled, *i.e.*, who is wedded without a dowry title and the priest's blessing. *Id. Ibid.* Caus. XXX. Qu. V. c. 1; Cap. Reg. Fran. *Ibid.* c. 6; Conf. Decret. Lib. IV. Tit. XX. It is called *arrha* by Innocent III. in Decret. Lib. III. Tit. XXXII. c. 14. Gregory I. ap. Gratian Caus. XXVII. Qu. II. c. 12, uses the phrase subarrhaverit. It is also called pignus. See Devoti Lib. II. Tit. II. § 111. Ayliffe 361. Such is the ring of modern times.

(26). Concil. Aurel. IV. A.D. 541, Can. 22; Concil. Paris III. A.D. 557, Can. 6; Nicolaus ap. Gratian Caus. XXX. Qu. II. c. 1; Const. 30 Edmund, A.D. 1236; Ayliffe 362; Can. 100 of 1603 A.D.

(27). Nicolaus ap. Gratian Caus. XXX. Qu. II. c. 1: Those who give boys to girls in the cradle effect nothing, unless both consent when they come to years of discretion, although the father and mother agreed and were willing. Const. 30 Edmund; Lynd. 272.

(28). Const. 30 Edmund, A.D. 1236; Lynd. 272.

they do not repudiate it then they cannot repudiate it afterwards (29). If any objection is made at the time of the publication of banns, the investigation of it must be referred to competent judges (30), since an ordinary presbyter in charge of a parish has no jurisdiction of the outer forum.

5. The effect of a solemn betrothal (31) is to create such a tie between the parties that they are henceforth called engaged persons (32) (sponsi), and is equivalent to a simple vow to marry each other (33). Should a solemn betrothal be followed by an act of consummation, there arises what is called a presumptive marriage (34), the effect of which was formerly

(29). Clemens III. in Decret. Lib. IV. Tit. XVIII. c. 4.

(30). Concil. Lat. IV. A.D. 1215, in Decret. Lib. IV. Tit. III. c. 3 : If there is a probable conjecture against contracting a marriage, let the contracting be expressly forbidden until it has been established by proof what ought to be done. Const. 23 Otho, A.D. 1237 ; Const. 6 Zouche, A.D. 1347.

(31). Prior to the Marriage Act, 26 Geo. II. c. 33, a betrothal, or, as it was called, a contract of marriage (pactio), was a valid contract, which, if it could be proved by witnesses, either party could enforce, against the other, and it was indissoluble *inter partes*. Devoti Lib. II. Tit. II. § 112. Sec. 13 of that act provided "that in no case whatsoever shall any suit or proceeding be had in any ecclesiastical court to compel a celebration of any marriage *in facie ecclesiae*, by reason of any contract of matrimony." Concil. Elib. A.D. 305, Can. 54 ap. Gratian Caus. XXXI. Qu. III. c. 1 : If parents have broken the faith of a betrothal, let them be excommunicated for three years [the sentence for breach of a simple vow], not, however, unless the betrothed parties (sponsus et sponsa) have been consenting parties. Decret. Lib. IV. Tit. IV. c. 1.

(32). Concil. Elib. Can. 54, A.D. 305, l. c., calls engaged persons sponsus et sponsa. Augustin *Ibid.* Caus. XXVII. Qu. II. c. 39 : Betrothed maidens (sponsae) should be at once given in marriage. Pelagius *Ibid.* I. Dist. XXXIV. c. 20, calls one betrothed sponsa.

(33). The importance of betrothal formerly consisted in the fact (1) that it was made upon oath, Decret. Lib. IV. Tit. l. c. 17 ; and (2) with the blessing of the Church, to break which Siricius, quoted note 42, says is a kind of sacrilege. In this country betrothal was no more than a simple promise, unless it had been followed by consummation, whereby the position of the parties was altered. The ancient form of Espousal, quoted note 13, and Lingard, Anglo-Saxon Church II. 11, show that the solemn betrothal here took place at the time of marriage.

(34). Athenag. Apol. A.D. 177, c. 33 : [Christ] permits not a man to send

such that any after-contracted marriage could be dissolved, and the presumptive marriage perfected into true marriage (35). These consequences have now been done away with in this country, at least so far as regards external obligation (36). The question of internal obligation is a matter to be dealt with according to circumstances in the inner forum.

6. When there has been no act of consummation, and a betrothal has neither been made upon oath nor the blessing of the Church been given to it, it may be dissolved either (1) by mutual consent, or (2) by one of the parties, if a destructive (dirimens) impediment supervenes (37), or if the other party is guilty of gross crime (38), or becomes a leper or permanent invalid (39), or takes a vow to enter religion (40), or fails to fulfil some stipulated condition (41). When, however, it has been made upon oath, and received the blessing of the

her away whose virginity he has brought to an end. Innocent III. A.D. 1203, in Decret. Lib. IV. Tit. V. c. 6 : After espousals have been contracted and sexual union has followed, there is a presumptive marriage. *Ibid.* Lib. V. Tit. XVI. c. 1 ; Devoti Lib. II. Tit. II. 107.

(35). So Alexander III. in Decret. Lib. III. Tit. IV. c. 3 and 5. In *Collins* v. *Jesset*, 6 Mod. 155, 2 Salk. 437, Stephens' Eccl. Stat. 328, it was stated by Justice Holt : If the contract be *per verba de futuro*, and after either of the parties so contracting, without a previous release or discharge of the contract, marries another, it will be good cause with them [the canonists] of a dissolution of a second marriage, and of decreeing the first contract being perfected into marriage.

(36). Concil. Trident. Sess. XXIV. c. 1, and in this country, 26 Geo. II. c. 33, and 4 Geo. IV. c. 76.

(37). Innocent III. in Decret. Lib. IV. Tit. I. c. 27, and Urban III. *Ibid.* Tit. XIV. c. 2.

(38). Innocent III. in Decret. Lib. II. Tit. XXIV. c. 25, says, because of the fornication of one of the parties after the betrothal. Craisson, § 4022.

(39). Urban III. in Decret. Lib. IV. Tit. VIII. c. 3. Craisson, § 4025.

(40). Gregory ap. Gratian Caus. XXVII. Qu. II. c. 28 ; Theodori Poenit. II. XII. 33, A.D. 673, *Ibid.* c. 27, and in Haddan and Stubbs III. 201 ; Alexander III. in Decret. Lib. III. Tit. XXXII. c. 2 ; Innocent III. *Ibid.* c. 7 ; Devoti § 129.

(41). Gregory III. A.D. 740, in Decret. Lib. II. Tit. XXIV. c. 3 ; Alexander III. *Ibid.* Lib. IV. Tit. V. c. 3 ; Urban III. *Ibid.* c. 5.

Church (42), it can only be canonically dissolved, like any other simple vow, by a dispensation, for which a good cause must be assigned; but it is dissolved *ipso facto* by any other marriage being consummated (43). In such a case the party marrying another is amenable to discipline for the breach of faith.

7. The actual marriage or the nuptials include—(1) the union of consent (44), or espousal *per verba de praesenti*, which creates what is known as ratified wedlock (*matrimonium ratum*) (45); and (2) sexual union or consummation (46), which creates what is termed consummated wedlock (*matrimonium consummatum*) (47). The union of consent is the plighted

(42). Concil. Elib. A.D. 305, Can. 54 ap. Gratian Caus. XXXI. Qu. III. c. 1; Novell. *Ibid.* Caus. XXX. Qu. V. c. 9: If any one swears to a woman upon the Holy Scriptures that he will have her as his lawful wife, or does so in an oratory, although he does not endow her, let her be his lawful wife. Siricius *Ibid.* Caus. XXVII. Qu. II. c. 50: You ask if one may receive in matrimony a girl betrothed (disponsatam) to another. We anathematise such a union (connubium = a marriage in law not recognised as such by the Church) and altogether forbid it, because that benediction which the priest gives one about to be wedded it is held amongst the faithful to be a kind of sacrilege to violate. Innocent III. in Decret. Lib. II. Tit. XXIV. c. 25.

(43). Innocent III. in Decret. Lib. II. Tit. XXIV. c. 25; Craisson, § 3998 holds that it is not dissolved *de jure*, so that (1) the use of the second marriage is sinful, and (2) if the second wife dies the survivor is bound to marry the first betrothed. But if no sacramental relation has been set up, custom and law may act as valid dispensations.

(44). Chrysostom ap. Gratian Caus. XXVII. Qu. II. c. 4: Not cohabitation (coitus) but consent (voluntas) constitutes matrimony. Isidor. *Ibid.* c. 1; Nicolaus *Ibid.* Caus. XXX. Qu. II. c. 1: Where there is not the consent (consensus) of both parties, there is no relation of husband and wife (conjugium). Concil. London A.D. 1175, Can. 18; Innocent III. in Decret. Lib. IV. Tit. I. c. 25, and Tit. II. c. 2; Const. 30 Edmund, A.D. 1236: There is no marriage when there is not consent of both parties. Lynd. 128; Ayliffe 362; Devoti Lib. II. Tit. II. § 103.

(45). Devoti Lib. II. Tit. II. § 106, says marriage is of three kinds, (1) ratum, (2) consummatum, (3) legitimum.

(46). Lynd 271.

(47). Coitus by Isidor. ap. Gratian Caus. XXVII. Qu. II. c. 1 and 4; admixtio viri by Ambros. *Ibid.* c. 5; commixtio sexus by Augustin *Ibid.*

troth or solemn life-vow (*sacramentum*) (48), which constitutes the marriage-tie (*retinaculum*) (49), by which the nuptials are initiated (50), and it ought to be made in face of the Church. Sexual union (*copula carnalis*) is the marital coupling of man and woman, whereby the condition of the parties is changed, and wedlock becomes a visible representation (*sacramentum*) of the union betwixt Christ and His Church. By it nuptials are consummated, and the marriage-bond (*vinculum*) is established (51). The essential part of marriage is held to consist in the union of consent (52); hence, where there can be no valid consent, there can be no valid marriage (53). Nevertheless, sexual union is such an integral part of marriage, that until it has taken place there is only a sacrament in the sense of a promise, but not in the sense of a visible

c. 16; Hieronym. *Ibid.* c. 37, quae sponsali conventione initiantur et commixtione corporum perficiuntur.

(48). Augustin ap. Gratian Caus. XXVII. Qu. II. c. 51.

(49). Gregory ap. Gratian Caus. XXXIII. Qu. I. c. 2; Ambros. *Ibid.* Caus. XXVII. Qu. II. c. 5: When the relation of husband and wife is initiated, the name yoke-fellowship (conjugium) is adopted. That relation is set up when a girl is given in marriage, not when she is known by sexual union.

(50). Ambros. ap. Gratian Caus. XXVII. Qu. II. c. 5 and 35; Hieronym. *Ibid.* c. 37 speaks of fornication being initiated. Liebermann VI. 917, distinguishes matrimony (1) *dum fit* and (2) *dum permanet.* Dwelling together is a type of the union between Christ and the Church.

(51). Augustin ap. Gratian Caus. XXXII. Qu. VII. c. 1; *Id.* c. 2, calls it confoederatio nuptialis.

(52). Ambros. de Inst. Virg. c. 6: Not the destruction of the flower of virginity but the conjugal pact creates yoke-fellowship. Chrysost. Hom. 32 in Math.: Wedlock is not set up by sexual union but by consent. Innocent III. in Decret. Lib. IV. Tit. IV. c. 5; Eugenii IV. A.D. 1439, Decret. ad Armenos.

(53). Nicolaus, A.D. 866, ap. Gratian Caus. XXVII. Qu. II. c. 2: If consent is absent at the time of the nuptials, all other solemnities, including sexual union, go for nothing (frustrantur). By English law consent is invalid unless given before a clerk in holy orders. See Chief-Justice Tindal in Stephens' Eccl. Stat. 2002, or by recent legislation before a civil registrar. Mad persons cannot consent. Devoti Lib. II. Tit. II. § 110. See the case of *Scott* v. *Sebright.*

sign of the union of Christ and His Church (54). Whenever marriage has been consummated, the presumption is in favour of valid consent (55).

8. Some difference of opinion exists as to what constitutes the matter and what the form in the sacrament of wedlock. (1) According to the older Schoolmen the external acts whereby marriage is brought about constitute the matter; the bodies of the contracting persons being the remote matter, the use of one another's bodies the proximate matter; and the form consists in the words or signs by which matrimonial consent is given (56). (2) According to others, the remote matter is the power over each other's body; the proximate matter is the mutual delivery of that power, of which the veil, the wreath, and the ring, are the symbols (57); and the form is the mutual acceptance of that power as a perpetual tie (58). (3) According to yet another view the mutual promise of fidelity constitutes the matter, and the

(54). Leo, A.D. 458, ap. Gratian Caus. XXVII. Qu. II. c. 17: Before sexual union nuptials have not got the sacramental sign of the union of Christ and His Church. Augustin *Ibid.* c. 16: That woman clearly does not pertain to marriage with whom there is shown to be no sexual union. *Ibid.* Caus. XXXIII. Qu. I. c. 2; Decret. Lib. IV. Tit. XV.; Const. 7 Reynolds, A.D. 1322; Lynd. 44 and 128; Devoti, § 126.

(55). Decret. Lib. IV. Tit. I. c. 26 and 30; Tit. II. c. 9, in case of the young; Tit. V. c. 6; Clement III. *Ibid.* Tit. XVIII. c. 4; Innocent III. *Ibid.* Lib. II. Tit. XIX. c. 10.

(56). Thom. Aquin. in IV. Dist. 26, Qu. 2, art. 1, quoted by Lynd. 271; Liebermann VI. 917.

(57). Isidor. ap. Gratian Caus. XXX. Qu. V. c. 7, says that the veil signifies submission, the white and purple in the wreath signify purity and offspring, and the ring is put on the fourth (*i.e.*, our third) finger, because the vein goes from it straight to the heart.

(58). 1 Cor. VII. 4: *ἡ γυνὴ τοῦ ἰδίου σώματος οὐκ ἐξουσιάζει, ἀλλ' ὁ ἀνήρ· ὁμοίως δὲ καὶ ὁ ἀνὴρ, κ. τ. λ.* Concil. Dunelm. A.D. 1220, in Wilkins I. 582: Let priests enjoin and teach contracting persons this form of words: I take thee, N., to my wife; I take thee, N., to my husband. For in these words there is great force, and [by them] matrimony is contracted. Benedict XIV. ap. Craisson, § 4154: Materia est mutua corporum traditio . . . et mutua corporum acceptatio forma, where acceptatio does not mean *usus*, because the Blessed Virgin was married to Joseph, although there was no *usus*. Liebermann VI. 917.

words of the priest are the form (59); but according to the last named view all marriages not celebrated by a priest would be non-sacramental (60).

9. A like diversity of opinion prevails as to who is the minister of the sacrament. (1) Among the Schoolmen it appears never to have been doubted that the parties themselves were the real ministers, and supplied each to other both the essential form and the essential matter (61). Nevertheless marriages entered upon without the presence of a priest, or, as they were called, clandestine marriages, were held to be irregular and incomplete (62), and the issue was accounted un-

(59). Liebermann VI. 918, 921.

(60). Bellarmine de Matrim. Lib. I. c. 7: If this opinion [that the words of the priest are the form] were true, all those are in error who teach that clandestine marriages, and other marriages celebrated without a priest, are true sacraments. . . . Either marriages without a priest contain the indissoluble bond, or they do not . . . If they do not contain it, they may be dissolved in any case, which the Church has never allowed.

(61). John de Burgo, A.D. 1385, in Stephens' Eccl. Stat. 2004: Of the minister of the sacrament it is to be observed that no other minister is required distinct from the parties contracting; for they themselves minister the sacrament to themselves, either the one to the other or each to themselves. . . . Scotus says that to the conferring of this sacrament there is not required the ministry of a priest, . . . and that the sacerdotal benediction . . . is not of the form or essence of the sacrament, but something sacramental, pertaining to the adornment of the sacrament. Decret. ad Armenos, A.D. 1439: The efficient cause of matrimony is in regular course mutual consent, expressed in words referring to the present. Devoti Lib. II. Tit. II. § 104.

(62). Tertullian de Pudic. c. 4: Among us secret connections not first professed in presence of the Church run risk of being accounted akin to adultery and fornication. Const. 7 Reynolds, A.D. 1322, excommunicates those who contract without a priest. In most rituals the priest pronounced the words: Ego vos conjungo, but in some dioceses the formula ran: Ideo matrimonium per vos contractum confirmo. Liebermann VI. 932. In *Collins* v. *Jesset*, 6 Mod. 155; 2 Salk. 437; Stephens' Eccl. Stat. 328, Lord Holt said: If a contract be *per verba de praesenti*, it amounts to an actual marriage, which the parties themselves cannot dissolve by release or other mutual agreement; for it is as much a marriage in the sight of God as if it had been *in facie ecclesiae*, with this difference, that if they cohabit before marriage *in facie ecclesiae*, they are for that punishable by ecclesi-

lawful (63), because public evidence was wanting that the union was according to Christ's law and not for lust (64). (2) Others, in order to exclude clandestine marriages, which by the law of many countries are now treated as absolute nullities (65), maintain that the words of the priest constitute the form, and that therefore a priest must also be the necessary minister (66). (3) Lyndwood (67) and Maldonatus (68) occupy an intermediate position, holding that although the priest is the ordinary minister of wedlock as he is of baptism, yet the parties themselves may be the extraordinary ministers of it, just as laymen may also be the extraordinary ministers of baptism.

10. The spiritual and sacramental effects of wedlock are threefold: (1) Protection is given against sin by converting into a lawful channel impulses which would otherwise have been unlawful (69). This is termed the honesty of wedlock. (2) A union

astical censures, and if after such contract either of them lies with another, they will punish such an offender as an adulterer. In the *Queen* v. *Millis*, Stephens' Eccl. Stat. 1996, Tindal said in the House of Lords: Before the Marriage Act a contract of marriage *per verba de praesenti* was a contract indissoluble between the parties, affording to either of the contracting parties, by application to the spiritual court, the power of compelling the solemnisation of an actual marriage; but such marriage [by the law of England] never constituted a full and complete marriage in itself, unless made in the presence of, and with the intervention of, a minister in holy orders.

(63). 20 Hen. III. c. 9, refuses to allow the children to be afterwards legitimised. Alexander III. in Decret. Lib. IV. Tit. XVII. c. 9, permits it.

(64). Alexander III. in Decret. Lib. IV. Tit. III. c. 2, refuses to allow them, unless both parties avow the marriage.

(65). Concil. Trident. Sess. XXIV. c. 1. declared clandestine marriages void. In this country 26 Geo. II. c. 33, A.D. 1753; 3 Geo. IV. c. 75, A.D. 1822; 4 Geo. IV. c. 76, A.D. 1823. What are called Scotch marriages are still valid in countries where the Tridentine decrees have not been accepted.

(66). Libermann VI. 929, states the principal arguments for this view.

(67). Lynd. 43.

(68). De Matr. I. Arg. 6 tertiae sent. Liebermann VI. 934.

(69). Lynd. 271: In matrimony is a remedy against sin effectively [working] in sensible signs, wherein matrimony is a sacrament. For it is a twofold remedy—partly curative, partly preventive. The first is received

of souls as well as of bodies is set up between the parties (70). This is termed its unity. (3) A permanent tie is created. This gives it its sacramental character. In themselves these effects exclude polygamy, either simultaneously or successively (71).

by other sacraments, the latter by the sacrament of matrimony. The union outwardly apparent by visible signs is the sacramental sign (sacramentum tantum); the union of souls produced inwardly is the sacrament itself (sacramentum et res). The effect of grace which is bestowed is the sacramental reality, I mean the reality primarily signified; but the reality secondarily signified is the union of Christ and the Church. *Id.* 45.

(70). Ambros. ap. Gratian Caus. XXVII. Qu. II. c. 36: In all matrimony a spiritual union is understood, which the corporal union of the married persons confirms and perfects. Urban II. *Ibid.* Caus. XXXI. Qu. II. c. 4: Those who constitute one body ought to have one mind. Const. 9 Peckham, A.D. 1281: We believe wedlock confers graces if it be contracted with a sincere mind by its sacramental virtue. Lynd. 170: The union of soul produced inwardly is the substantial reality of the sacrament. Craisson, § 4154; Perrone Praelect 297; Liebermann VI. 885.

(71). Justin Martyr 1 Apol. c. 15: All who by human law are twice married are, in the eye of our Master, sinners. Athenag. Plea for the Christians, c. 33, A.D. 177: A second marriage is only a specious adultery. For he who deprives himself of his first wife, even though she be dead, is a cloaked adulterer. Minucius Felix, A.D. 200, c. 31: We abide by the bond of a single marriage. Tertullian ad Uxor. 7, quoted in *Order*, note 298; Apost. Can. 48: If a layman having put away his wife, take another or marry a divorced woman, let him be excommunicated. Concil. Turon. A.D. 400, Can. 2; Theodori Poenit. I. II. 7, in H. & S. III. 187: Let him who marries again do penance for a year. Let them not be excluded from communion, nor let him put her away. Apost. Const. III. 2: Once marrying according to the law is righteous, as being according to the will of God; but second marriages after the promise are discreditable, not on account of the marriage itself, but because of the falsehood. Chrysostom ap. Gratian Caus. XXXI. Qu. I. c. 9: To take a second wife is, according to the apostolic precepts [Rom. VII. 3; 1 Cor. VII. 39; 1 Tim. V. 14], allowed, but in the nature of things it is fornication. But since it is done by God's permission, and allowedly, it is honest fornication. Concil. Hertford A.D. 673, Can. 10: If any man divorce his wife, let him not be coupled to another. Law Northumbrian Priests 54, A.D. 950: If any man dismiss his lawful wife and marry another, let him want God's mercy unless he make satisfaction for it. Can. 27 Dunstan, A.D. 963: He that relinquisheth his wife and taketh another breaketh wedlock. Concil. Ensham A.D. 1009, Can. 8: Let no Christian take a divorced woman to wife, nor take another

Successive marriages are, nevertheless, allowed after the death of one of the parties (72), and in exceptional cases during the other's lifetime, as the less of two evils (73). On this ground a second union has been allowed to the innocent party when a wife has been divorced for adultery (74), or has become physically

wife should he have one. Cnut's Law 7, A.D. 1017 : Let no man have more than one wife, and her a wedded wife, and let him remain with her only as long as she lives. Innocent III. in Decret. Lib. IV. Tit. XIX. c. 8 : Plurality is to be reprobated in either sex. Concil. Tribur. A.D. 895, ap. Gratian Caus. XXVIII. Qu. II. c. 1.

(72). Past. Hermas Com. IV. c. 4 : There is no sin in marrying again, but if they remain unmarried they gain greater honour. Concil. Arelat. A.D. 314, Can. 10 : Those whose wives are taken in adultery if themselves youthful, should be advised as far as possible not to marry again during their lifetime. Hieronym. ap. Gratian Caus. XXXI. Qu. I. c. 10 : It is better to have known one man than many, yet to know a second and a third is allowed. Gregory Nazianzen Orat. 13 : A single marriage is righteous, a second is an indulgence. Concil. Agath. A.D. 506, *Ibid.* Caus. XXXIII. Qu. I. c. 1 ; Egbert's Excerpt. 116, A.D. 740 : A man may marry again after a month, a woman after a year. Urban III. to Bishop of Exeter, in Decret. Lib. IV. Tit. XXI. c. 4, permits a woman to marry again within a year ; also Innocent III. *Ibid.* c. 5 ; Craisson, § 4099 and 4122. Italian law requires a woman to wait ten months.

(73). Origen in Math. : Now even some of the rulers of the Churches permitted a certain woman to marry during her husband's lifetime, contrary to Scripture ; . . . yet not altogether without excuse, for it is likely this license was permitted in comparison of worse things. Concil. Arelat. A.D. 314, Can. 24 : Whoever shall have done so [*i.e.*, married again during the lifetime of his dismissed wife] shall be cut off from Catholic communion. Basil Epist. Can. 77 : Such as remarry [after divorcing an adulterous wife] should do penance . . . and in the seventh year be reckoned with the faithful. African Can. 102 : Neither a divorced husband or wife may be yoked to another ; if they despise this they must be put to penance. Hilary, A.D. 384, in 1 Cor. VII. 11 : A man may marry again if he dismiss his sinning wife. Concil. Venet. A.D. 465, Can. 2 : Those who have left their wives . . . without proof of adultery and have married others, must be repelled from communion. Concil. Agath. A.D. 506, Can. 25, says "without credibly declaring any cause for divorce." Concil. Compend. A.D. 757, Can. 13 : If a man have divorced his wife and have given her leave to enter a monastery for the sake of religion, or to take the veil outside a monastery for the sake of God, the man may take a lawful wife. Liebermann. VI. 981, 992.

(74). Theodori Poenit. II. XII. 5, in Haddan and Stubbs III. 169 : If any

incapacitated (75), or a leper (76), or has left her husband for five years and refuses to return (77), or has been carried off into captivity and cannot be redeemed (78), or is lost sight of altogether (79), or has conspired against her husband's life (80);

man's wife commit adultery, let him put her away and take another, *i.e.*, if he has put her away because of her adultery and she is his first wife, then he may take another. Remarriage under such circumstances is the rule among the Greeks. Craisson, § 4122 ; Syn. Rom. A.D. 826, Can. 36 : No man may leave his acknowledged wife except for the cause of fornication, and then marry another. Syn. Patric. in H. & S. II. 337, Can. 27 : If a man [who has divorced his wife for fornication] marries a second wife as though the first were dead, let them not forbid it [because the law requires an adulteress to be stoned].

(75). Gregory III. A.D. 740, ap. Gratian Caus. XXXII. Qu. VII. c. 18 : If a woman overtaken with infirmity cannot discharge her duty to her husband . . . and he cannot contain, let him marry. Concil. Aurel. II. A.D. 533, Can. 11, however, says : Contracta matrimonia accedente infirmitate nulla voluntatis contrarietate tolerantur [? tolluntur]. Egbert's Excerpt. 199, A.D. 740, says that he cannot put his first wife away except for adultery.

(76). Concil. Compend. A.D. 757. Can. 16 : If a leper have a healthy wife and he is willing to let her take another husband, she may take another if she wishes ; similarly in the case of a woman.

(77). Theodori Poenit. II. XII. 19, in Haddan and Stubbs III. 200 ; Egbert's Excerpt. 122, A.D. 740, says, after five or seven years, and requires him to do penance for five years for the breach of vow, but Concil. Compend. A.D. 757, Can. 18, says not if the man has left the country because of a family feud. Alexander III. in Decret. Lib. I. Tit. XVII. c. 8, declares the issue lawful of a woman who had married again with the bishop's leave after being deserted by her husband.

(78). Theodori Poenit. II. XII. 20–21, *Ibid.* 200, says he may do so after five years if she cannot be redeemed, but if she afterwards returns he must receive her back, and put away his second wife. Egbert's Excerpt. 123, A.D. 740, says after seven years.

(79). Theodori Poenit. II. XII. 23, 24, *Ibid.* 201, says that if he cannot trace her he may do so, because it is better to do so than to commit fornication ; but if in that case she returns and he has another wife, he may not receive her back. Clement III. in Decret. Lib. IV. Tit. I. c. 19, forbids, however, a second marriage, even after seven years, until certain intelligence arrives of the other's decease. Also Lucius III. *Ibid.* Tit. XXI. c. 2 ; but Innocent III. *Ibid.* XVII. c. 14, declares the issue of such a marriage lawful.

(80). Concil. Vermer. A.D. 752, ap. Gratian Caus. XXXI. Qu. I. c. 6.

to the wife when the husband's misconduct renders living with him impossible (81); but in all such cases a dispensation is necessary from the proper authority by those who desire to be received to Christian communion (82). Second marriages of all kinds are, however, forbidden to be blessed by the Church (83), and are a disqualification for orders (84). Third and fourth marriages are in the East treated as manifest incontinence (85). Married persons may not take vows of continence except with the willing consent of both (86), nor without such consent can marriage be dissolved by the solemn vow of one.

(81). Justin Martyr 2 Apol. c. 2, mentions the case of a Christian woman who separated from her husband because of his vices. Gratian Caus. XXXII. Qu. VII. c. 23: If you have lain with your wife's sister you can have neither one nor the other; and if she who was your wife was not party to your wickedness, if she cannot contain, let her marry in the Lord whom she will.

(82). Theodori Poenit. II. XII. 19 l. c. says, with the bishop's consent.

(83). Concil. Elib. A.D. 305, ap. Gratian Caus XXXI. Qu. I. c. 8: A presbyter may not be present at the feast of a second marriage, since penance is enjoined for a second marriage. What presbyter for the sake of a feast would consent to such a penance? Concil. Neocaesar. A.D. 314, *Ibid.* c. 8: A presbyter must not be present at the wedding feast of a second marriage, especially since he is required to do penance for a second marriage. Concil. Laodic. A.D. 363, Can. 1; Concil. Brac. II. A.D. 572, Can. 38; Can. 9 Elfric, A.D. 957: Nor may any priest be at a wedding-feast where either man or woman is married a second time, nor bless their coming together. Egbert's Excerpt. 89; Alexander III. in Decret. Lib. IV. Tit. XXI. c. 1.

(84). Apost. Const. VI. 17; Augustin ap. Gratian Caus. XXVIII. Qu. III. c. 2.

(85). Basil ad Amphiloch. c. 4, and Apost. Const. III. 2: Third marriages are indications of incontinency, but such marriages as are beyond the third are manifest fornication. Theodori Poenit. I. XIV. 3: One who marries for the third time or oftener, *i.e.*, a fourth or fifth wife or beyond: let him do penance for seven years. . . . Let them, however, not be excluded from communion. So Basil ruled, but the canon requires him to do penance for four years.

(86). Gregory ap. Gratian Caus. XXVII. Qu. II. c. 19: If the wife does not follow the continence which the man desires, or the man refuses that which the wife desires, marriage may not be dissolved. *Id. Ibid.* c. 20, 21, 25. Syn. Rom. A.D. 826, *Ibid.* c. 33: If the wife be unwilling or the husband, even for such a thing [as entering religion], marriage is not dis-

11. Besides the two regular degrees of Christian wedlock, called respectively ratified and consummated wedlock, there is a third and lower degree known as lawful wedlock (matrimonium legitimum) (87), or a state of recognised marriage (*connubium*) which is not sacramental (88). Such is a heathen marriage which has no perpetual tie about it, and may be terminated by either of the parties should he become a Christian (89); a morganatic marriage (90) or permanent connection with an inferior in station (91); a second marriage

solved. Syn. VIII. A.D. 869, *Ibid.* c. 12; Nicolaus, A.D. 867, *Ibid.* c. 26; Egbert's Excerpt. 118, A.D. 740. Other authorities, ap. Gratian Caus. XXXIII. Qu. V., and Caus. XXVII. Qu. II. c. 19–26; Decret. Lib. V. Tit. XIV. c. 6; Const. 27 Edmund, A.D. 1236; Lynd. 203.

(87). Decret. Lib. IV. Tit. I. c. 9 and 10; Alexander III. *Ibid.* Tit. IV. c. 3; Innocent III. *Ibid.* Tit. XIX. c. 7: Although among the heathen true marriage exists, ratified marriage does not. Devoti Lib. II. Tit. II. § 106; Liebermann VI. 972.

(88). Augustin ap. Gratian Caus. XXVII. Qu. II. c. 6, quoted above, note 11. Siricius *Ibid.* c. 50; Gregory *Ibid.* c. 19: Human law permits what divine law forbids. The rubric to the Pontifical in Maskell Mon. Rit. I. 72: The unity of Christ and the Church is typified in a first marriage, not however in a second marriage. Many second marriages it nevertheless declares to be sacramental, but defectively sacramental.

(89). Innocent III. A.D. 1199, in Decret. Lib. IV. Tit. XIX. c. 7; Devoti l. c. See below, § 30.

(90). Morgengap is, by the law of the Lombards, the post-nuptial gift made in the morning to a second wife in lieu of dower, when a woman of unequal rank is taken to wife without right of dower for herself and heirship for her children. Heinecii Elem. Jur. Germ. Lib. I. Tit. XIII.; Devoti, § 108.

(91). Concil. Tolet. I. A.D. 400, Can. 17 ap. Gratian I. Dist. XXXIV. c. 4: Let him who has not a wife, but a concubine instead of a wife, not be repelled from communion, provided he be content with union with one woman, be it wife or concubine. Apost. Const. VIII. 32: Let a concubine who confines herself to her master alone be received. Isidor. *Ibid.* c. 5: A Christian, so far from having many, may not have two women at once, but one only—either a wife, or if he have no wife, a concubine in place of a wife. Egbert's Excerpt. 125, A.D. 740. When, however, there has been no marital consent nor connubium, and the relation is simply that of a temporary mistress, Leo, A.D. 458, *Ibid.* c. 11, says: To put away a slave-girl from his bed and to take a wife of known free birth is not a duplica-

allowed to a deserted wife or in any other case during her first husband's lifetime (92), or to a husband who has divorced his wife and married again (93). Some theologians nevertheless maintain that, since among Christians there can be no marriage which is not sacramental (94), the distinction between lawful wedlock and ratified and consummated wedlock is purely academic, except in the case of heathen marriages, and that such legally permitted unions are not marriages at all but legalised fornication (95). Others deny that all marriages amongst Christians must necessarily be sacramental. However this may be, one thing nevertheless seems clear, that such unions were not in former times treated as obstacles to communion, provided they were contracted for life and with one person only (96).

tion of the relation of husband and wife, but a step in advance towards a good life.

(92). Alexander III. in Decret. Lib. IV. Tit. XVII. c. 8, declares the issue of a deserted woman who had remarried with the bishop's sanction lawful.

(93). Epiphan. Haer. 59: A man having been separated from one, if by chance he have been lawfully married to a second wife, the Holy Word and the Holy Church of God have pity on him.

(94). Liebermann VI. 919.

(95). Chrysostom, quoted note 71, makes the same remark of all second marriages. Pius IX. 19th Sept. 1852, in Craisson, § 4154, but not speaking *ex cathedrâ:* C'est un point de la doctrine catholique que le sacrement n'est pas une qualité accidentalle surajoutée au contrat mais qu'il est de l'essence même du mariage, de telle sorte que l'union conjugale entre les Chrétiens n'est légitime que dans le mariage sacrament, hors duquel il n'y a qu'un pur concubinage.

(96). Epiphan. Haer. 59, § 4: The divine word does not incriminate him who, after a divorce for fornication, adultery, or some other evil, is united to a second wife . . . but bears with his weakness, not allowing him to have two wives whilst one is alive, but if separated from one, to be legally united to another should it so happen. Augustin de Fide et Opere, c. 19, considers the remarriage of one who has divorced his wife for adultery a venial offence. Asterii Amaseni Hom. V. A.D. 400: Hear ye who marry many wives . . . and leave many widows. Believe me, marriage is not dissolved (διακόπτεται) save only by death and adultery. See above, notes 11 and 91. In other cases, besides adultery in the Eastern Church, the Church has indirectly sanctioned remarriage, as by declaring marriages void by reason of destructive impediments which

12. Spiritual matrimony is a position of united life between a prelate and his Church, whereby he is devoted to its service and it is pledged to receive his ministrations for their mutual edification, so that neither can depart from the other (97). To set up spiritual wedlock three things are, however, required: (1) the consent of the people electing and the person elected, which is called the initiation of it; (2) the allowance of the union by the whole Christian community, which is termed its confirmation; and (3) the perfecting and consecrating the union by ordination or consecration. Hence spiritual matrimony is not set up unless ordination (98) or consecration follows upon election for the service of the particular Church with which it is concluded (99).

### Irregular and Invalid Wedlock—Impediments.

13. All marriages, whether ratified, consummated, or lawful, may be divided into three classes (100), viz. (1) those which are good in form and substance, and against which no objection can be alleged, called true marriages (101); (2) those which are defective in form but are presumed to be good in substance,

were previously only obstructive impediments (clandestine marriages), and by creating fresh destructive impediments (those between the fourth and sixth degrees before the Fourth Lateran Council).

(97). Cyprian Ep. 51 (Oxf. 55), 24, speaks of one who, when a Church is already full, strives to be made an adulterous and extraneous bishop. Const. 13 Langton, A.D. 1222: To prevent spiritual bigamy we forbid a Church to be committed to two rectors. Ayliffe 360.

(98). Codex Eccles. Afric. 90: If any one has for once only acted as reader in a Church, let him not be advanced to the clerical office in any other. Edgar's Law 8, A.D. 960: That no priest do of his own accord desert the Church to which he has been blessed and married. Law 35 Northumbrian Priests, A.D. 950: If a priest dismiss one wife and take another, let him be anathema. Elfric. Can. 28, A.D. 957: Let no priest remove for gain from one minster to another, but ever continue in that to which he was ordained.

(99). Const. 21 Othobon, A.D. 1268, requires bishops to minister in those Churches to which they have plighted their troth.

(100). Devoti Inst. Lib. II. Tit. II. c. 107.

(101). Innocent III. in Decret. Lib. IV. Tit. XIX. c. 7.

called irregular or presumptive marriages (102); and (3) those which are good in form and appearance, but are invalid in themselves by reason of some latent impediment, which are called ostensible or reputed marriages.

14. Anything which renders a presumptive or ostensible marriage irregular or invalid is called an impediment. Impediments are of two kinds (103): (1) those which prevent a marriage being lawfully initiated, but do not avoid it after it has been consummated, which are termed obstructive (*impedientia*) impediments; and (2) those which invalidate a marriage after it has been consummated, and render it either *ipso facto* null and void, or retrospectively voidable by sentence of a proper authority (104). The latter are called destructive (*dirimentia*) impediments (105).

15. Obstructive impediment (106) may arise either (1) from the party's own act (107), or else (2) from the law of Church or state. A simple vow of chastity or religion is an impediment arising from the party's own act. So, too, is pre-contract, or contracting with another *per verba de futuro* (108). The law

(102). A contract of marriage *per verba de praesenti*, followed by consummation, is a presumptive marriage. Innocent III. in Decret. Lib. IV. Tit. IV. c. 5; 32 Hen. VIII. c. 38, and was a valid ecclesiastical marriage in this country, as it still is in Scotland, before the act 26 Geo. II. c. 33. See note 62.

(103). Augustin ap. Gratian Caus. XXXV. Qu. I. c. 3; Isidor *Ibid.* Qu. IV. c. 1. They are called by Lynd. 275, impedimenta impedientia and impedimenta dirimentia respectively. Devoti, § 115, 122. See note 23.

(104). Before the statute 5 and 6 Gul. IV. c. 54, A.D. 1835, marriage with a deceased wife's sister could at any time be avoided by sentence, but as such a sentence could only be pronounced in the lifetime of the parties, the status of the children remained unsettled during the parent's lifetime. To avoid this uncertainty the act declared such marriages to be *ipso facto* void, thus bringing English law into harmony with that of Concil. Lat. IV. A.D. 1215, in Decret. Lib. IV. Tit. III. c. 3.

(105). Devoti, § 148.

(106). Craisson, § 4188, gives the lines—

> Ecclesiae vetitum, Tempus, Sponsalia, Votum,
> Impediunt fieri, permittunt facta teneri.

(107). Lynd. 276.

(108). Lucius III. in Decret. Lib. IV. Tit. I. c. 17, and Alexander III.

of the Church forbids marriage with one betrothed to another (109), or with the widow of one in holy orders (110), or the solemn contraction of marriage on a high festival or ember day, or between Septuagesima and the 15th night after Easter, or between the first of the Rogation days and seven nights after Pentecost (111). It also forbids marriage with a Jew or infidel (112), and clandestine marriages (113), by which are understood (1) marriages which are initiated without the presence of a priest (114), or (2) without publication of

*Ibid.* c. 10, but it cannot be set up in the outer forum unless it can be proved by witnesses, according to Concil. Westminster A.D. 1102, Can. 22. Now 32 Hen. VIII. c. 38, A.D. 1540, and sec. 13 of 26 Geo. II. c. 33, make precontract no longer a bar in law, whatever it may be in conscience.

(109). See notes 14 and 42.

(110). Concil. Epaon. A.D. 517, Can. 32: Let the widow of a priest or deacon, if she remarry any one whomsoever, be expelled from the Church. Concil. Aurel. A.D. 511, Can. 13. See *Duties of Order*, § 53.

(111). Concil. Ensham. A.D. 1009, Can. 18, says from Septuagesima till ths 15th night after Easter. Concil. Laodic. A.D. 363, Can. 52 ap. Gratian Caus. XXXIII. Qu. IV. c. 8: Neither marriages nor festivals (birthdays) should be observed in Lent. Martin *Ibid.* c. 9; Nicolas, A.D. 866, *Ibid.* c. 11; Concil. Seligenstadt A.D. 1022, Can. 10: It is not lawful to celebrate marriages from Septuagesima to the octave of Easter, and in the three weeks before the festivity of John the Baptist, and from Advent to the Epiphany. Decret. Lib. II. Tit. IX. c. 4; Lynd. 185, 274. The Roman rule made the octave of Easter the end of the forbidden time. Concil. Trident. Sess. XXIV. c. 10.

(112). 1 Cor. VII. 39 allows marriage "only in the Lord." Tertullian ad Uxor. II. 2; Cyprian adv. Judaeos III. 62: Marriage may not be contracted with Gentiles. Concil. Chalcedon A.D. 451, Can. 14: They may not join their children in marriage to a heretic, a Jew, or heathen, unless the person who marries the orthodox person shall promise to come over to the orthodox faith. Concil. Agath. A.D. 506, Can. 67 ap. Gratian Caus. XXVIII. Qu. I. c. 16; Concil. Arvern. A.D. 535, Can. 4, *Ibid.* c. 17. See *Baptism*, § 28.

(113). Concil. Lat. IV. A.D. 1215, in Decret. Lib. IV. Tit. III. c. 3: We strictly forbid clandestine marriages. Const. 7 Reynolds, A.D. 1322; Lynd. 271, 276.

(114). Ignatius ad Polycarp. c. 5: It is becoming to men and women who marry that they marry with the counsel of the bishop, that the marriage may be in the Lord and not in lust. Tertullian, quoted above,

banns (115), or elsewhere than in Church (116), or in a Church other than the proper Church (117), and (3) marriages which are consummated after the benediction without a proper interval (118).

16. Disregard of an obstructive impediment renders the contracting parties and the offending priest liable to censure (119);

note 6. Concil. Hertford A.D. 673, Can. 10: As to matrimony, that none be allowed to any but what is lawful. Theodori Poenit. I. XIV. 1, in Haddan & Stubbs III. 187: At a first marriage let a priest say mass and bless both of them, and afterward let them absent themselves from church for thirty days. After these are over let them do penance for forty days, and devote themselves to prayer, and afterwards communicate with an oblation. Ancient Form of Espousal, A.D. 946: The mass priest shall be at the wedding, who shall celebrate their coming together with God's blessing. Concil. Winton A.D. 1076, Can. 5: That no man give his daughter or kinswoman in marriage without the priest's benediction; other marriage shall be deemed fornication. Concil. London A.D. 1175, Can. 17: Let no faithful man of whatsoever degree marry in private but in public, by receiving the priest's benediction. In *The Queen* v. *Millis*, Stephens' Eccl. Stat. 1997, Chief-Justice Tindal: It will not be found in any period of our history either that the Church of England has held the religious celebration sufficient to constitute a valid marriage, unless it was performed in the presence of an ordained minister, or that the common law has held a marriage complete without such celebration. By the Act 6 and 7 Gul. IV. c. 85, marriages may now be celebrated without any religious ceremony. Yet recently, in Bethel's case, A.D. 1889, a Christian basis was required.

(115). Concil. Lat. IV. Can. 51, in Decret. Lib. IV. Tit. III. c. 3; Const. 7 Reynolds, A.D. 1322; Const. 4 Thorsby, A.D. 1363.

(116). Const. 7 Reynolds, A.D. 1322: Let matrimony be celebrated with reverence in the daytime, and in the face of the Church, without laughter, sport, or scoff.

(117). Const. 11 Stratford, A.D. 1343.

(118). Stat. Eccl. Ant. A.D. 505, Can. 13. ap. Gratian I. Dist. XXIII. c. 33, and Caus. XXX. Qu. V. c. 5: When the bride and bridegroom are to be blessed by the priest, let them be offered by their parents or groomsmen (paranymphi); and when they have received the blessing, let them remain the same night in virginity, out of respect for the blessing. Concil. Turon. *Ibid.* c. 1; Egbert's Excerpt. 88, A.D. 740. Lynd. 276, says that a marriage is clandestine unless such abstinence is practised for two or three days.

(119). Concil. Lat. IV. in Decret. Lib. IV. Tit. III. c. 3, § 2: Let a condign punishment be awarded to those who offend [by clandestine solemnisation], even in the permitted degrees. Devoti l. c. § 149.

but no obstructive impediment, except marriage with a Jew or infidel in mediaeval times, and clandestine marriage by recent legislation, invalidates a marriage contracted *per verba de praesenti* when once it has been consummated (120). Moreover, obstructive impediments may be dispensed with either for good cause or by custom (121); and, to take away all excuse for clandestine marriages, those who place obstacles in the way of lawfully contracting matrimony are ordered to be excommunicated (122).

17. Destructive impediments are of three kinds: (1) absence of consent, caused either by violence, mistake, fraud, or some condition subversive of true marriage; (2) incapacity to contract; and (3) relationship within the forbidden degrees (123); to which must be added in this country, (4) knowingly and wilfully intermarrying in a place other than a Church or licensed chapel, without banns or without the presence of a clerk in holy orders or registrar (124), and (5) contracting in a

(120). Innocent III. in Decret. Lib. IV. Tit. IV. c. 5.

(121). Const. 3 Langham, A.D. 1367, makes provision if espousals are to be made on a festival that hath 9 lessons, or in Lent, or in the Ember days. Special licenses are granted by the archbishop to enable marriages to be initiated in private houses, and modern statutes allow marriage before a registrar.

(122). Const. 1 Langton, A.D. 1222; Const. 13 Othobon, A.D. 1268: We strictly forbid any man to hinder the solemnisation of marriage lawfully contracted in the face of the Church. Const. 3 Peckham, A.D. 1279.

(123). The following lines contain a list of canonical impediments, but those underlined are not allowed to be legal impediments in this country. See Stapf's Vollständiger Pastoral-Unterricht über die Ehe, by Riffel, 1847.

> Error, Conditio, Votum, Cognatio, Crimen,
> Cultûs disparitas, Vis, Ordo, Ligamen, Honestas,
> Aetas, Affinis, Si clandestinus et Impos
> Raptave sit mulier nec parti reddita tutae
> Haec socianda vetant connubia, facta retractant.

(124). 26 Geo. II. c. 33, sec. 8; 4 Geo. IV. c. 76; 6 and 7 Gul. IV. c. 85: As to the power of the secular authority to make marriages void, Carrière Compend. de Matrim. No. 290, states that four views are held: (1) That princes in the nature of things neither can, nor ever could, invalidate

heathen country with an infidel upon a non-Christian basis (125). Destructive impediments invalidate a presumptive or reputed marriage absolutely in some cases of relationship within the degrees forbidden by the law of state and Church (126), and in some cases of clandestine marriage; but in other cases of relationship within the forbidden degrees, contingently upon steps being taken to avoid them in the lifetime of one of the parties (127). Dispensations are allowed for marriages to take place out of Church or without banns, but not in this country to permit marriages within the degrees forbidden by the laws of the realm (128).

marriage; (2) that princes in the nature of things can invalidate marriage, but that they have lost this power in regard to their Christian subjects, since Christ elevated wedlock to the dignity of a sacrament; (3) that princes in the nature of things have this power, and have not lost it by the institution of the sacrament of marriage, but that so far as their Christian subjects are concerned it has been withdrawn from them by the Church; (4) that princes have, and still enjoy, and can exercise this power. See the discussion in Craisson, § 4182 *seq.*, and Thom. Aquin. Suppl. Qu. 57, Art. 2, ad 4.

(125). Although 6 and 7 Gul. IV. c. 85 allows marriage to be celebrated in this country without any religious ceremony, yet it was decided in *Bethel's* case, 1889, that marriage with a Zulu girl which conformed to the *lex loci* abroad was no valid marriage, because it had not a Christian basis.

(126). 5 and 6 Gul. IV. c. 54, declares marriages within the degrees forbidden by law absolutely void.

(127). The jurisdiction of spiritual courts, being *in salutem animae*, is limited to the lifetime of the parties. Hence 15 Ed. III. c. 5, A.D. 1341: The king and his heirs shall have the conusance of usures dead; and that the ordinaries of holy Church have the conusance of usures on life. *Hinks* v. *Harris*, Carth. 271. See § 32.

(128). 32 Hen. VIII. c. 38, allows all marrriages without the Levitical degrees, and forbids all dispensations within them. These degrees are specified in 25 Hen. VIII. c. 22 and 28 Hen. VIII. c. 16. Dispensations were formerly allowed as being the less of two evils, either for the good of the Church or for fear of apostasy, poverty, &c. Dispensations from the forbidden degrees were substantially allowed in Gregory's time by the direction not to separate those already married, ap. Gratian Caus. XXXV. Qu. VIII. c. 1; Theodori Poenit. II. XII. 25, in Haddan and Stubbs III. 201. They were regularly granted by the Pope in Anselm's time (Epist.

18. A marriage is void which is initiated without consent, *i.e.*, contrary to the declared wishes of parents in the case of minors, or by such violence as precludes consent in the case of adults (129). To preclude consent the parents must have actually objected at the time of publication of banns, or the violence must have been (1) real and substantial (130), (2) wrongful (131), and (3) not have been subsequently condoned (132). According to Roman law, which was adopted in France and in some other countries, marriage with the victim of rape was on public grounds altogether forbidden (133); but subsequent condonation is now held to be evidence that the violence was consented to (134), and it is doubtful whether marriage with any other person would be allowed in conscience to one who was guilty of the violence, if at least the injured person claimed marriage by way of reparation (135).

Paschal II. ad Anselm. Labbé XII. 1008), and are of two kinds: (1) those publicly granted through the Datary or the Secretary of Briefs, and (2) those privately granted through the penitentiary. Dispensations in cases of consanguinity, affinity, spiritual affinity, and adultery, unless accompanied by compassing the death of a previous husband or wife, are granted by the Datary, in all graver cases by the Secretary of Briefs. Devoti, § 122; Coelestin. III. in Decret. Lib. IV. Tit. XIV. c. 3; Innocent III. A.D. 1213, *Ibid.* c. 6, declares a dispensation void unless it recite the true cause. Craisson, § 4421.

(129). Gratian Caus. XXXI. Qu. II. c. 1 and 2; Decret. Lib. IV. Tit. 1. c. 25, and Tit. VII. c. 2; Ayliffe 361; Devoti Inst. Lib. II. Tit. II. § 110 and 124. See Stier's case, October 1895.

(130). Alexander III. in Decret. Lib. IV. Tit. 1. c. 6, 15; Honorius III. *Ibid.* c. 28.

(131). It is not wrongful force when the law compels a man to marry a girl whom he has carnally seduced under a promise of marriage. Exod. XXII. 16; Alexander III. in Decret. Lib. IV. Tit. 1. c. 10, and Lib. V. Tit. XVI. c. 1.

(132). Clemens III. in Decret. Lib. IV. Tit. 1. c. 21.

(133). Cap. Franc. ap. Gratian Caus. XXXVI. Qu. II. c. 11: Those who carry off or ravish women, or seduce them carnally, may never have them as wives, however much they may afterwards endow them, or marry them with consent of parents. Concil. Trident. Sess. XXIV. c. 6.

(134). Clement III. in Decret. Lib. IV. Tit. XVIII. c. 4; Lucius III. *Ibid.* Lib. V. Tit. XVII. c. 6; Innocent III. *Ibid.* c. 7; Devoti, § 145.

(135). Craisson, § 4218.

19. Mistake and fraud (136) also render marriage voidable, provided they are of such a nature as to prevent proper consent; as if (1) one person is married by mistake for another (137), or (2) a slave is married by concealing his or her condition (138), marriage with a slave being otherwise good (139), or (3) an unchaste woman by fraudulently representing herself to be virtuous (140); but it is not voidable if consummation has taken place after the discovery of the mistake or fraud, because consummation under such circumstances implies consent. A marriage is also voidable which is undertaken with a condition to defeat the true object of marriage (141), because it fails for want of proper consent.

(136). Ayliffe 363, enumerates four kinds of mistakes: (1) when the wrong person is married by mistake; (2) when a mistake is made as to the condition of the person married, as if she turns out to be a slave; (3) when a mistake has been made as to her property by false representations; or (4) as to her quality, as when a man has married a strumpet, mistaking her for an honest woman. Only the first of these mistakes is now allowed as a destructive impediment. The last may be a good ground of divorce, according to Christ's words. Therefore Hieronym. ap. Gratian Caus. XXXIII. Qu. I. c. 14, calls it meritorious to marry a strumpet, to make an honest woman of her, which of course assumes that he is not doing so by mistake. The second reason is a good ground of divorce before the marriage is consummated. Concil. Vermer. A.D. 752, ap. Gratian Caus. XXIX. Qu. II. c. 4; Decret. Lib. IV. Tit. IX. c. 2; Theodori Poenit. II. XII. 20 and 23, in Haddan and Stubbs III. 200. The third is a good reason for withdrawing from a betrothal, but not for rescinding a consummated marriage.

(137). Innocent III. in Decret. Lib. IV. Tit. I. c. 26; Devoti, § 142; Craisson, § 4205.

(138). Concil. Cabilon. II. A.D. 813, Can. 30 ap. Gratian Caus. XXIX. Qu. II. c. 8; Alexander III. in Decret. Lib. IV. Tit. IX. c. 2; Innocent III. *Ibid.* c. 4; Craisson, § 4209 and 4310.

(139). Concil. Vermer. A.D. 752, ap. Gratian Caus. XXIX. Qu. I. c. 4; Theodori Poenit. II. XIII. 5, *Ibid.* c. 2, and H. & S. III. 202; Adrian to Archbishop of Canterbury, in Decret. Lib. IV. Tit. IX. c. 1.

(140). In reference to such a marriage, our Lord is by some thought to have used the words *παρεκτὸς λόγου πορνείας* in Math. V. 32, and *εἰ μὴ ἐπὶ πορνείᾳ* in Math. XIX. 9; *πόρνεια* being the sin of an unmarried person, *μοιχεία* the sin of adultery. In this country the rule of *Caveat emptor* is applied to such cases.

(141). Gregory IX. in Decret. Lib. IV. Tit. V. c. 7; If conditions are made

20. Incapacity to contract may arise from two causes: (1) physical, and (2) moral. Boys under fourteen and girls under twelve are presumed to be physically incapable of contracting a valid marriage (142) unless their capacity is actually demonstrated (143). Physical incapacity may also exist in older persons (144). If antecedent to marriage and irremovable, it renders the marriage a nullity (145), but not if it supervenes after marriage (146). It may not, however, be set up until after three years of living together (147), and it must be proved most strictly (148).

21. Moral incapacity is said to be of three kinds: (1) that which arises from madness or weakness of intellect (149), (2) that which is caused by holy orders or a solemn vow, and (3) that which is caused by a previous marriage (150). By the general law of the Church (to which the present English Statute Law is an exception), holy orders invalidate any after-

contrary to the substance of marriage, such as "I will marry you if you will undertake to have no children," or "until I find a richer and more honourable wife," or "on condition that you will earn a livelihood by adultery," there is no effective marriage contract. Conf. Augustin ap. Gratian Caus. XXVIII. Qu. I. c. 5.

(142). Alexander III. to Bishop of Norwich, in Decret. Lib. IV. Tit. II. c. 6.; Urban III. *Ibid.* c. 10 and 11; Const. 30 Edmund, A.D. 1236; Devoti, § 125; Ayliffe 361.

(143). Alexander III. in Decret. Lib. IV. Tit. II. c. 9.

(144). Decret. Lib. IV. Tit. XV. c. 1; Devoti, § 126; Craisson, § 4219; Impotentia adest quando conjuges nequeunt habere copulam per se aptam ad generationem; unde impotentes non sunt steriles aut feminae quae semen non retinent, modo possint habere copulam ex se ad generationem idoneam, § 4220; Oriri potest (1) ex maleficio; (2) ex frigiditate, (3) ex improportione vel, (4) ex commixtione sexus (hermaphrodite), § 4229.

(145). Alexander III. in Decret. Lib. IV. Tit. XV. c. 3.

(146). Concil. Aurel. II. A.D. 533, Can. 11: Let not a contracted marriage be dissolved by any supervening infirmity. Gratian Caus. XXXII. Qu. VII. c. 24: Alexander III. to Archbishop of Canterbury, in Decret. Lib. IV. Tit. VIII. c. 1.

(147). Honorius III. in Decret. Lib. IV. Tit. XV. c. 7.

(148). Gratian Caus. XXXIII. Qu. I. c. 2.

(149). 51 Geo. III. c. 37.

(150). Devoti, § 128.

contracted marriage, but not one already existing. A solemn vow puts an end both to an existing and also to an after-contracted marriage; but to do so (1) it must be a solemn and not a simple vow; (2) it must be made on entering some approved form of religion (151); and (3) it must be made with consent of both parties (152). A previous marriage invalidates a second marriage, except in certain cases in which the second union is tolerated, being regarded as only imperfectly sacramental (153).

22. A marriage is also void by the parties being related within the forbidden degrees, whether they are so related by blood, by marriage, or by spiritual affinity (154), and the parties who have knowingly contracted such a marriage are excommunicate *ipso jure* (155). The term degree, however, is used in two senses: (1) ordinarily, it expresses the intervals of direct relationship between any two persons in ascending or descending line; (2) exceptionally, it expresses the intervals of collateral relationship in which one degree includes several direct degrees. Thus a man is said to be separated by one direct degree from his mother or daughter, by two from his grandmother, grandchild, or sister, by three from his aunt or niece, by four from his cousin, and by six from his second-cousin. But a man is

(151). Can. Apost. 27: Of those who come into the clergy unmarried we permit only readers and singers to marry afterwards. Concil. Chalcedon A.D. 451, Can. 14; Apost. Const. VI. 17: It is not lawful for a bishop, a presbyter, or a deacon, if they are unmarried when they are ordained, to be married afterwards. Synod Trull. A.D. 692, Can. 13, forbids clergy to marry after being ordained, but allows subdeacons, deacons, and presbyters to retain the wives whom they had previously married. Alexander III. in Decret. Lib. IV. Tit. VI. c. 1 and 2; Extrav. Joan. XXII. Tit. VI.; Devoti, § 128. See *Duties of Order*, § 14.

(152). Alexander III. in Decret. Lib. IV. Tit. VI. c. 4, and Lib. III. Tit. XXXII. c. 2: *Id.* to Bishop of Worcester, *Ibid.* c. 3; Innocent III. *Ibid.* c. 7; Boniface VIII. in Sext. Lib. III. Tit. XV.

(153). See above, § 10. This is forbidden by Clement III. in Decret. Lib. IV. Tit. VII. c. 4 and 5, but not disallowed by Innocent III. *Ibid.* c. 7.

(154). Decret. Lib. IV. Tit. I. c. 24; Lynd. 272; Devoti, § 123, 151.

(155). Concil. Vien. A.D. 1311, in Clem. Lib. IV. Tit. I.

separated by only one collateral degree (156) from his sister, by two from his cousin or niece, and by three from his second-cousin or great-niece.

23. It is disputed among canonists whether the prohibition of marriage within any degree of blood-relationship is due to Divine law, natural law, or positive enactment (157). Anciently the Greek Church allowed marriage between those related in the third direct degree, and the Western Church between those related in the fifth direct degree without, however, separating those who were married in the fourth (158). In the eighth century the Roman Church prohibited marriage to all related up to the seventh degree (159), but did not separate

(156). Pseudo-Gregory uses it thus in his fifth answer to Augustin's questions, in Baeda I. 27.

(157). The Jews were so averse to such marriages that to some of them they made death the penalty. They allowed Gentile proselytes to intermarry even with a sister or stepmother, which probably explains the incestuous marriage mentioned (1 Cor. v. 1). These marriages were forbidden Acts xv. 20. Thomas Aquinas, Gonzales, Pontius and Liguori hold the prohibition of marriage in the second degree, as between brother and sister, to be one of positive law only. Devoti, § 122; Concil. Neocaesar. A.D. 314, Can. 2 forbids, but Innocent III. in Decret. Lib. IV. Tit. XIX. c. 9, allows a man to marry a deceased brother's wife by dispensation. *Ibid.* c. 8 and Tit. XVII. c. 15, allows pagans converted to Christianity to retain their wives, although within the second or the third degree, just as the Jews permitted proselytes. Devoti, § 120, says that a bishop is restrained by no Divine law from allowing many marriages, but that the bishop's power is restrained by councils.

(158). Theodori Poenit. II. XII. 25, in H. & S. III. 201, and Caus. XXXV. Qu. II. c. 3: Marriage is allowed in the fifth degree according to the Romans, but it is not dissolved in the fourth after it has been consummated. Therefore men may marry in the fifth, and they are not separated if found in the fourth. Gregory *Ibid.* Qu. VIII. c. 1 and 2.

(159). Gregory III. A.D. 731, ap. Gratian Caus. XXXV. Qu. II. c. 1, 16; Capit. Franc. *Ibid.* c. 19, and Qu. VIII. c. 1; Concil. London, A.D. 1075, Can. 6: That no one marry any of his own kindred, or of the kindred of a deceased wife, or the widow of a deceased kinsman within the seventh degree. Concil. Westminster A.D. 1107. Can. 24: That they who are related within the seventh degree be not coupled in marriage. Concil. London A.D. 1126 Can. 16.

those married in the sixth degree (160), nor enforce this rule strictly in regard to those married in ignorance in the fifth or fourth degree (161). All impediments beyond the fourth degree were removed by the Fourth Lateran Council in the thirteenth century, which at the same time not only declared marriages within the fourth degree void (162), but also pronounced the issue of all such marriages illegitimate (163). The power of determining the impediments to marriage appears anciently to have rested with the bishop, and then to have been claimed to belong to a general council or to the Pope between whiles (164), but it would appear that it can nowhere be exercised without regard to the custom of the locality (165).

24. The prohibited degrees are not confined to degrees of blood-relationship, but include also degrees of affinity, the result of a previous marriage, or of illicit connection (166), but

(160). Concil. Ensham A.D. 1009, Can. 8; Cnut's Law 7, A.D. 1017: Never let it be that a Christian marry within the sixth degree.

(161). Gratian Caus. XXXV. Qu. VIII.

(162). Can. 51, in Decret. v. Tit. III. c. 3: Since the prohibition of conjugal union in the three last degrees has been revoked, we will that it be strictly observed in the other [four]. This had been the rule in England in 673 A.D., as appears from Pseudo-Gregory's [*i.e.*, Theodore's] letter ap. Gratian Caus. XXXV. Qu. II. c. 20; Egbert's Excerpt. 131, A.D. 740.

(163). 32 Hen. VIII. c. 38, forbids marriages within the fourth degree; but such marriages, though voidable, were not *ipso facto* void before the statute 5 and 6 Gul. IV. c. 54 made them so.

(164). Benedict XIV. de Syn. Lib. XII. c. 5 no. 9: No particular synod can create a new destructive impediment. Craisson, § 4176.

(165). Alexander III. in Decret. Lib. IV. Tit. XI. c. 1 and 3: We will that you carefully inquire into, and diligently imitate the custom of your metropolitan, or other adjacent Churches.

(166). Concil. Paris III. A.D. 557, Can. 4, calls it an unlawful union to marry a brother's widow, a mother-in-law, a paternal uncle's widow, a wife's sister, a maternal uncle's widow, a daughter-in-law, a mother's sister, a father's sister, a step-daughter, and step-daughter's daughter. Concil. Turon. II. A.D. 567, Can. 21; Concil. Autissiodor A.D. 578, Can. 27–32; Concil. Matiscon ap. Gratian Caus. XXXV. Qu. II. c. 14; Gregory *Ibid.* c. 3, and Caus. XXVII. Qu. II. c. 12, § 2; Concil. Tribur. A.D. 895, *Ibid.* Caus. XXXV. Qu. II. c. 7, 13; Concil. London A.D. 1075, Can. 6: That no one

in the latter case not to the same extent. Thus a man may not marry his step-daughter or mother-in-law, who through his wife are his connections (*affines*) in the first degree (167), nor his deceased wife's sister or brother's widow, to whom by marriage he is connected in the second degree (168), nor his uncle's widow nor his wife's niece, with whom he is connected in the third degree; nor may a woman marry her husband's relatives who through marriage are connected with her in the like degrees. Illicit connection (169), should it have taken place with a woman's relative within the forbidden degrees after espousal and before marriage, is a bar to lawful marriage with her (170), but it does not invalidate the marriage if it takes place after the nuptials have been consummated (171). Near relationship, which makes illicit connection a destructive impediment, is, by the Council of Trent, limited to the second direct degree, and does not extend further (172).

marry any of his own kindred, or the widow of a deceased kinsman within the seventh degree.

(167). Concil. Elib. A.D. 305, Can. 66, excludes from communion until death one who thus offends. Concil. Aurel. II. A.D. 533, Can. 10: Let no one ever marry his mother-in-law. Concil. Autissiodor A.D. 578, Can. 27, 28; Pseudo-Gregory to Augustin Ans. v. in Baeda I. 27: To marry with one's step-mother is a heinous offence.

(168). Concil. Elib. A.D. 305, Can. 61, requires a man who marries a deceased wife's sister to do penance for five years. Concil. Neocaesar. A.D. 314, Can. 2, and Concil. Aurel. A.D. 511, Can. 18, exclude from communion until he separates from her one who marries his deceased brother's wife. Syn. Rom. ad Gallos. A.D. 384, Can. 9; Concil. Martini. A.D. 572, Can. 79, condemn both kinds of marriages. Concil. Agath. A.D. 506, Can. 61, and Concil. Epaon. A.D. 517, Can. 30, condemn all marriages described as incest, and allow those so married to marry again properly, but do not divorce cousins already married. Concil. Aurel. III. A.D. 538, Can. 10; Concil. Arvern. A.D. 535, Can. 12; Concil. Autissiodor A.D. 578, Can. 30; Craisson, § 4284; Pseudo-Gregory to Augustin l. c.: It is forbidden to marry a sister-in-law, because by the former union she is become the brother's flesh.

(169). Innocent III. A.D. 1206, in Decret. Lib. IV. Tit. XIII. c. 10.

(170). Alexander III. *Ibid.* c. 2; Innocent III. *Ibid.* c. 7, and Tit. XIV. c. 2.

(171). Innocent III. *Ibid.* c. 6.

(172). Concil. Trident. Sess. XXIV. c. 4.

25. At one time the impediment of affinity included affinity of three kinds: (1) direct affinity arising out of marriage between a husband and his wife's relations, or between a wife and her husband's relations; (2) indirect affinity brought about by a second marriage and existing between a husband and the relatives of his wife's first husband, or between a wife and the relatives of her husband's first wife; and (3) remote affinity set up by a third marriage, and existing between a second wife and a first wife's connections by a previous marriage. The impediments arising from indirect and remote affinity were abolished by the Fourth Lateran Council in the thirteenth century (173), and the prohibition of marriage with a wife's or a husband's near relations and connections is now limited to the husband or wife personally (174). Hence two brothers may now marry two sisters; father and son may marry mother and daughter. Public honesty, nevertheless, extends the prohibition against marrying a deceased wife's relatives to contemplated as well as to completed marriages, and forbids a man or woman to marry a relative in the first degree of one to whom he or she has been betrothed (175), or a relative within the fourth degree of one with whom marriage has been initiated, although it was never consummated (176).

26. A similar disability extends to persons connected with one another spiritually or legally. By spiritual connection or affinity is understood the tie which exists between a god-parent

(173). Can. 50, A.D. 1215, *Ibid.* Decret. Lib. IV. Tit. XIV. c. 8.

(174). Innocent III. *Ibid.* c. 5.

(175). The words of Siricius ap. Gratian Caus. XXVII. Qu. II. c. 50, forbidding one person to marry a girl betrothed to another, are often quoted as an early instance of public honesty. Julius II. *Ibid.* c. 15: If any one is betrothed or formally pledged to a wife, and either through death or any other cause fails to consummate the marriage, let neither his surviving brother nor any of his kindred marry her. Gregory *Ibid.* c. 14, quoted in note 14. This prohibition, extending to the fourth degree, was reduced by Concil. Trident. Sess. XXIV. c. 3, to the first degree.

(176). Some have attributed to Boniface VIII. in Sext. Lib. IV. Tit. I. the invention of this impediment, but Coelestin. III. in Decret. Lib. IV Tit. XVII. c. 10, writing to the Archbishop of York, declared children illegitimate on that ground. Innocent III. *Ibid.* Tit. XIII. c. 7.

and god-child, or between a spiritual father and one whom he has baptized or confirmed (177); by legal affinity the tie which exists between an adopted child and the adopting parents (178). The incapacity arising from spiritual affinity was by the Council of Trent limited to the sponsor or baptizer, and the baptized or confirmed person personally, and his father or mother (179), and in this country it is generally ignored altogether. The rule as to legal affinity depends on the custom of the country (180), and is held also only to exist between the person himself and the husband or wife of the other (181). Neither of these disabilities, if they subsequently supervene, destroy marriage (182).

27. Marriage is also forbidden to an adulterer and the partner of his crime. In former times this prohibition was rigidly enforced until the full term of penance for the adultery had been fulfilled (183). The prohibition is now confined to three cases of

(177). Gratian Caus. XXX. Qu. I. c. 1, and Qu. III. and IV.; Concil. Ensham. A.D. 1009, Can. 8: Never let it be that a Christian marry within the sixth degree of relations among his own kindred, . . . nor to the widow of one that is so near akin in worldly affinity, nor one nearly related to his wife whom he formerly had, nor to any consecrated nun, nor to his spiritual relations. Cnut's Law 7, A.D. 1017: That no Christian man do ever take a wife of his own kin within the sixth degree, nor the widow of a kinsman so nearly related to him, nor of the kindred of a wife whom he formerly had, nor of his sureties at baptism. Concil. Westminster A.D. 1200, Can. 11: Let not a godson contract with the daughter of the baptizer, or of the god-parent, whether born before or after. Const. 2 Reynolds, A.D. 1322, Sext. Lib. IV. Tit. III. c. 3; Lynd. 35.

(178). Nicolaus, A.D. 865, in Decret. Lib. IV. Tit. XII; Devoti, § 136.

(179). Gratian Caus. XXX. Qu. III. c. 4: Sons or daughters of spiritual parents, begotten either before or after sponsorship, may lawfully contract marriage, but *Ibid.* c. 5 says that those born afterwards may not, because secular lords forbid the unemancipated to marry adopted children. Alexander III. in Decret. Lib. IV. Tit. XI. c. 1, inclines to the latter view. Concil Trident. Sess. XXIV. c. 2.

(180). Benedict XIV. de Syn. Dio. Lib. IX. c. 10, no. 5; Craisson, § 4273.

(181). Liguori, Lib. VI. no. 1027; Benedict XIV. de Syn. Lib. IX. c. 10, no. 4.

(182). Decret. Lib. IV. Tit. XI. c. 2, 4, 5, 6.

(183). Concil. Elib. A.D. 305, Can 72 ap. Gratian Caus. XXXI. Qu. I. c. 7, permits it after five years' penance; also Concil. Meldens. A.D. 845, *Ibid.*

crime (184), viz. (1) when a man and woman have schemed for the death of the husband or wife of one of them in order to be in a position to marry one another (185); (2) when one of them, after committing adultery, has actually brought about the death of his or her own husband or wife (186); and (3) when adultery has been committed between them, coupled with a promise to marry one another when free so to do, and the adultery and promise have been persisted in up to the time of the natural death of the injured party (187).

### The Dissolution of Wedlock—Divorce.

28. Of the three aspects under which wedlock may be regarded, viz., as a natural, a civil, and a sacramental relation, the two former allow it to be voidable in whole or in part in accordance with custom or the law of the state (188). The

c. 5; Concil. Tribur. A.D. 895, Can. 51, *Ibid.* c. 1, 3, 4; Clemens III. *Ibid.* Decret. Lib. IV. Tit. VII. c. 4, 5; Gregory IX. *Ibid.* c. 8.

(184). Concil. Vermer. A.D. 752, ap. Gratian Caus. XXXI. Qu. 1. c. 6, and in Decret. Lib. IV. Tit. XIX. c. 1; Alexander III. *Ibid.* Tit. VII. c. III.; Innocent III. *Ibid.* c. 6; Coelestin. III. *Ibid.* Lib. III. Tit. XXXIII. c. 1; Craisson, § 4318.

(185). Alexander III. to Bishop of Exeter, in Decret. Lib. IV. Tit. XVII. c. 6.

(186). Concil. Meldens. A.D. 845, ap. Gratian Caus. XXXI. Qu. 1. c. 5, but not, according to Alexander III. in Decret. Lib. IV. Tit. VII. c. 1, when the other party is innocent, and would be injured by the rule being enforced. Alexander III. to the Abbot of Fountains, *Ibid.* c. 2.

(187). Innocent III. *Ibid.* c. 6.

(188). Cod. Theodos. Lib. III. Tit. XVI.; Justinian Novel. 117; Marculfus Lib. II. c. 30; Hieronym. Ep. 84 ad Oceanum: The laws of Cæsar are one thing, those of Christ another. Ambros. Lib. VIII. c. 30: You put away your wife as though it were right, and not a crime, and fancy it is allowed to you because human law raises no bar, but Divine law does. Augustin Serm. 392 (al. 49): This is not allowed by Catholic law, but it is by place-law (non jure poli etsi jure fori). Chrys. Hom. in 1 Cor. VII.: Do not quote to me laws made by outsiders which allow a bill of divorce to be given. For God will not judge you by those laws in that day, but by His own laws. Gregor. Ep. Lib. XI. 45 (al. IX. 39): Be it known to you that although human law allows it, Divine law forbids it. Devoti Lib. II. Tit. II. § 150; Liebermann VI. 991.

partial avoidance of it by the suspension of the marital coupling or common life is termed sequestration, or separation from bed and board ([189]); the total avoidance of it, by relaxing the contract of mutual fidelity, is termed divorce or repudiation. But it is otherwise with wedlock as a sacramental relation. As a life-long bond set up by the law of Christ, wedlock is indissoluble during the lifetime of the parties, except perhaps by adultery.

29. It is the general teaching of the Western Church that when once lawful wedlock has been contracted and consummated between Christians it cannot be dissolved, either by the sentence of a judge as in divorce ([190]), by the lapse of one of

(189). Concil. Aurel. V. A.D. 541, Can. 19, directs nuns who marry to be excommunicated; but if they purge their fault by separating (sequestratione), they may be readmitted to communion. Concil. Lugdun. III. A.D. 583, Can. 1.

(190). Math. XIX. 6: What God hath joined let not man put asunder; v. 8: In the beginning it was not so [that divorce was allowed]. Mark X. 11, 12; Luke XVI. 18; 1 Cor. VII. 10; Hermas. Command. IV. c. 1: If the woman continue in her crime, let the man put her away and remain by himself; should he marry another, he himself commits adultery. Athenag. Apol. 33; Tertullian de Monog. c. 9: [Matrimony] is dissolved not through the harshness of divorce, but through the debt of death. . . . A divorced woman cannot even marry legitimately. Concil. Gangra. A.D. 355, Can. 14 ap. Gratian I. Dist. XXX. c. 3; Augustin. *Ibid.* Caus. XXXII. Qu. VII. c. 1: The nuptial bond (confoederatio nuptialis) is not abolished by divorce, so that they continue when separated to be man and wife (ut sibi conjuges sint etiam separati), seeing they commit adultery with those with whom they copulate after their divorce. *Ibid.* c. 2: For as one who is excommunicated for some crime is not without the sacrament of baptism, even though he is never reconciled to God, so a wife divorced for adultery is not without the marriage bond (vinculo), though she be never reconciled to her husband. *Ibid.* c. 27: Such is the strength of the domestic tie between husband and wife that, although it be tied for the sake of procreation, it cannot be untied for the sake of procreation. . . . The tie of nuptials remains, although the offspring, for the sake of which it was instituted, does not follow, owing to manifest sterility. Concil. Carthag. A.D. 407, *Ibid.* c. 5: According to the Gospel and the Apostles' rule, let not a man divorced from his wife, or a woman divorced from her husband, be joined to another, but let them remain apart or be reconciled. Hieronym. *Ibid.* c. 7; Concil. Elib. A.D. 305, *Ibid.* c. 8; Gregory *Ibid.* c. 22; Egbert's

the parties into heathenism (191), or by anything short of the natural death of one of them (192), or his civil death by the solemn profession of the religious life. Ordinarily, the profession of the religious life must be made by both parties, and in this country the license of the archbishop is also required for that purpose (193). It is only allowed to be made by one without the other, if (1) the other consents thereto, and (2) is so advanced in years as to be able to observe continence in the world without suspicion (194). The Eastern Church, whilst allowing that marriage cannot be dissolved by divorce, contends that the bond (*vinculum*) is destroyed by adultery, provided it is complete (195), and hence regularly permits remarriage after divorce for adultery.

Excerpt. 120, A.D. 740, in Decret. Lib. IV. Tit. IV. c. 1, and Lib. III. Tit. XXXII. c. 14.

(191). Innocent III. in Decret. Lib. IV. Tit. XIX. c. 7, and Lib. III. Tit. XXXII. c. 14; Devoti, § 151.

(192). 1 Cor. VII. 39: *γυνὴ δέδεται νόμῳ ἐφ' ὅσον χρόνον ζῇ ὁ ἀνὴρ αὐτῆς· ἐὰν δὲ κοιμηθῇ ὁ ἀνὴρ αὐτῆς, ἐλευθέρα ἐστὶν ᾧ θέλει γαμηθῆναι, μόνον ἐν Κυρίῳ.* Augustin ap. Gratian Caus. XXXII. Qu. VII. c. 2 and 28: The conjugal tie remains among the living, and can neither be abrogated by separation nor by union with another.

(193). Alexander III. to Bishop of Exeter in Decret. Lib. III. Tit. XXXII. c. 4.

(194). Const. 27 Edmund, A.D. 1236: Let the priest forbid under pain of anathema any married person to enter into religion, or to be received except by ourselves or our license.

(195). Chrysostom Hom 19 in 1 Cor.: By adultery the marriage has been already dissolved. . . . After the wife's fornication the husband is no longer a husband. Asterius in Keble's Sequel, p. 58: Marriages are severed by nothing save death and adultery. See note 72. Goar's Eucholog. Graec. The chief arguments are (1) that Math. v. 32 implies that a wife may be put away for fornication; (2) that Math. XIX. 32, Mark X. 11, and Luke XVI. 18 imply the same. In reply to (1) it is alleged that *παρεκτὸς λόγου πορνείας* in Math. v. 32 applies to antenuptial fornication (see above, § 19); and to (2), that the words in Math. XIX. 32 were not spoken of Christian marriage, but of the dispute in the Jewish schools between the followers of Rabbi Schammai, who contended that a woman could only be separated from her husband for adultery, and the followers of Rabbi Hillel, who maintained that she could be separated for being generally distasteful to him Deut. XXIV. 1). See Liebermann VI. 985, who also

30. When, on the other hand, lawful marriage has only been contracted but not consummated, it may be dissolved, because the religious bond is not yet sacramentally complete (196). This may be effected either (1) by the solemn profession of the religious life by one of the parties, or (2) by sentence of a competent authority for a satisfactory cause (197). For the profession of the religious life the consent of the other party is in this case not necessary (198); nay, so little is it required that, in order to afford both the opportunity of embracing religion, two months must elapse after marriage before either can be compelled to live with the other and render conjugal rites (199). For the same reason, or rather because the religious bond is altogether absent from it, a heathen marriage may be dissolved on one of the parties becoming a Christian (200), (1) if the other

remarks, § 990: A distinction must be drawn between truths which are believed to be contained in the Word of God and rest on the common faith of the Church but have not been laid down in any solemn decree, and those which the Church has expressly defined and requires to be believed under pain of anathema. Truths of the former kind there can be no doubt belong to the faith, but those who dissent from them are not cut off from the unity of the Church, nor do they incur the penalty of anathema. Lactantius Epit. Div. Inst. c. 66: [God has commanded] that the bond of the conjugal compact shall never be dissolved unless unfaithfulness have broken it.

(196). See above, § 7.

(197). Gregory ap. Gratian Caus. XXXIII. Qu. I. c. 1 and 2, says that if marriage has not been consummated on account of the man's [alleged] incapacity, the wife may marry another; but if the man afterwards wishes to marry he must take back his first wife. Theodori Poenit. II. XII. 32 in Haddan & Stubbs III. 201: If a man and woman are united in matrimony and the woman afterwards says that he cannot consummate the marriage, if any one can prove that it is so, let her marry another. Decret. Lib. IV. Tit. XV.

(198). Alexander III. in Decret. Lib. III. Tit. XXXII. c. 2: After lawful consent has been given in words of the present, one may enter a monastery against the wish of the other, provided there has been no sexual union. Innocent III. A.D. 1206, *Ibid.* c. 14: Before matrimony has been consummated by sexual union, either husband or wife may embrace religion without consulting the other. Thom. Aquin. in 4 Dist. 27, Qu. 1.

(199). Alexander III. *Ibid.* c. 7.

(200). Justin. 2 Apol. c. 2, relates that a Christian woman gave a bill of

refuses cohabitation, or (2) to prevent the blaspheming of the Divine name, or (3) to escape the commission of mortal sin (201); but it is not necessarily dissolved by conversion (202). Should a heathen renounce his marriage on becoming a Christian, and his partner be converted before he has contracted a fresh marriage, the former union revives, and becomes true sacramental marriage (203).

31. What is ordinarily spoken of as divorce is either the avoiding the tie of mutual fidelity as a civil relation by the state, which does not affect the obligations of Christians, or else the formal declaration that no sacramental relation exists. In the case of presumptive or reputed marriages which upon investigation are found to be no marriages at all, or in case of a real marriage the sacramental character of which has been already destroyed by adultery, such a formal declaration is necessary, on the ground that, whenever wedlock has been solemnly contracted in face of the Church, (1) such wedlock must be taken to be *prima facie* good although the impediment may be notorious (204); (2) that it cannot be treated as a nullity until it has been judicially declared to be such (205); and (3) that it

divorce to her heathen husband, lest she might be a partaker in his sins. 1 Cor. VII. 13: If he [the heathen husband] be pleased to dwell with her, let her not put him away; ver. 15: But if the heathen husband depart, let him depart οὐ δεδούλωται ὁ ἀδελφὸς ἢ ἡ ἀδελφὴ ἐν τοῖς τοιούτοις. Augustin ap. Gratian Caus. XXVIII. Qu. I. c. 8: Concil. Tolet. IV. A.D. 633, Can. 10; Ambrosiaster in 1 Cor. VII. 15: If the unbeliever departs, she has it in her discretion to marry a man of her own creed if she will.

(201). Innocent III. A.D. 1199, in Decret. Lib. IV. Tit. XIX. c. 7.

(202). Theodori Poenit. II. IV. 1, A.D. 673, in H. & S. III. 193, repeating Augustin ap. Gratian Caus. XXVIII. Qu. III. c. 2: "In baptism sins are released (dimittuntur), not the conjugal tie with a wife, because sons born before baptism as well as those born after are equally the sons of the baptized." On the other hand, Concil. Tribur. A.D. 895, Can. 39, *Ibid.* Qu. II. c. 1, in accordance with Athenag. quoted note 34: If a man marries a virgin-wife before baptism, he cannot after baptism have another during her lifetime. Innocent III. in Decret. Lib. IV. Tit. XIX. c. 8.

(203). Innocent III. l. c.

(204). Alexander III. l. c. c. 3; Urban III. *Ibid.* c. 6.

(205). Concil. Agath. A.D. 506, Can. 25: Those who put away their wives before they have been judicially condemned, or they have stated the

cannot be declared to be a nullity except in the lifetime of the contracting parties (206). Those cases in which the law of the state treats marriages as *ipso facto* void for purposes of inheritance do not concern us here (207).

32. Separation from bed and board is the name given to the suspension of the common life, and the withdrawal from conjugal rites, whilst the marriage bond remains intact. Such a separation may be brought about either by mutual consent or by one of the parties against the will of the other. It is allowed to one against the will of the other: (1) if one of the parties should relapse into heresy or idolatry (208); (2) if the married relation should oblige one of them to be an accomplice in crime, or the interruption of it will conduce to the amendment of the other (209) (3); if the husband is guilty of cruelty towards the wife (210); or (4) if either of them is guilty of adultery.

33. In case of adultery the innocent party is required to separate from the guilty one until the proper term of penance has expired (211). It is then at his option to receive the

cause of cutting them adrift (discidium) before the comprovincial bishops, should be excluded from the communion of the Church.

(206). Coelestin. III. in Decret. Lib. IV. Tit. XVII. c. 11.

(207). See above, § 17.

(208). Urban III. l. c. Lib. IV. Tit. XIX. c. 6; Innocent III. *Ibid.* c. 7.

(209). Alexander III. l. c. Lib. IV. Tit. XIX. c. 2.

(210). Concil. Vermer. A.D. 752, ap. Gratian Caus. XXXI. Qu. l. c. 6; Alexander III. in Decret. Lib. II. Tit. XIII. c. 8; Innocent III. *Ibid.* c. 13.

(211). Concil. Neocaesar. A.D. 314, Can. 8 ap. Gratian I. Dist. XXXIV. c. 11: If the wife of any clergyman have committed adultery since he has been in orders, he ought to dismiss her with a bill of divorce. If he choose to retain her, he may not discharge his office. Pastor Hermas ap. Gratian Caus. XXXIV. Qu. II. c. 7, and Decret. Lib. V. Tit. XVI. c. 3; Chrysostom *Ibid.* Caus. XXXII. Qu. l. c. 1: He who passes over the adultery of his wife is a participator in her crime. *Id. Ibid.* c. 4: If a man finds his wife to be an adulteress and afterwards chooses to dwell with her, let him do penance for two years for having intercourse with an adulteress. Hieronym. *Ibid.* c. 2; Siricius, A.D. 385, *Ibid.* Caus. XXXIII. Qu. II. c. 12. 13, 16, requires conjugal abstinence during penance. Theodori Poenit. I. XIV. 4, *Ibid.* Caus. XXXII. Qu. l. c. 6, and H. & S. III. 188: If a man finds his wife to be an adulteress, and does not put her away, let him do penance

offender back or not (212). To avoid worse evils, the substitution of a fresh partner in place of the offending one is sometimes permitted (213). But since the sacramental relation, even if destroyed by adultery (214), may be re-established by cohabitation, all separated persons remarrying in one another's lifetime are required to do penance, as though themselves guilty of adultery (215). Separation for adultery is, moreover, not

for three years, and as long as he does penance abstain from her. Egbert's Excerpt. 119, 121, A.D. 740; Decret. Lib. IV. Tit. XIX. c. 5.

(212). Chrysostom ap. Gratian Caus. XXXII. Qu. I. c. 4, says that after two years' penance he ought to receive her back, because by the satisfaction she deserves to be no longer called an adulteress. Augustin *Ibid.* c. 7, 8: The reconciliation of husband and wife, after adultery has been purged by penance, should not be difficult, seeing that by the keys of the kingdom of heaven remission of sins is without doubt bestowed. Ambros. *Ibid.* c. 9: When wickedness is renounced, virtue is acquired. Theodore *Ibid.* c. 6, says after three years. Theodori Poenit. II. XII. 11, in Haddan and Stubbs III. 200: If a woman has committed adultery, it is in her husband's discretion to be reconciled to her or not. Decret. Lib. V. Tit. XVI. c. 3.

(213). Origen in XIX. Math. states that some rulers of Churches have allowed a woman put away by her husband to be joined to another. Basil Ep. 199, canonica II. ad Amphilochium, Can. 48: She who is deserted by her husband ought in my opinion to remain unmarried. Theodori Poenit. II. XII. 5, in H. & S. III. 199: If any man's wife commit adultery, he may put her away and take another, *i.e.*, if he have put her away because of adultery and she is his first wife, he may take another; and she, if she will do penance for her sins, may after five years take another. *Id.* II. XII. 19, 20, 21, *Ibid.* II. 200, allows remarriage in other cases during the partner's lifetime. See above, § 10.

(214). Augustin ap. Gratian Caus. XXXII. Qu. VII. c. 28, Caus. XXXIV. Qu. 1. See § 29, notes 190 and 195.

(215). Concil. Arelat. 1, A.D. 314, Can. 10, in H. & S. I. 7: Let those who detect their wives in adultery, being themselves youthful believers and forbidden to marry, be advised as far as possible not to take other wives. Codex Eccles. Afric. Can. 102; Concil. Andegav. A.D. 453, Can. 6, substituting the Roman for the Eastern rule, decreed: Let those who pretend to marry the [divorced] wives of others whilst their husbands are alive, abstain from communion. Theodori Poenit. II. XII. 19, 20, 21, prescribes three years' penance when remarriage takes place with the bishop's sanction. *Id.* I. XIV. 8, *Ibid.* III. 188: Let him who puts away his wife [wantonly] and takes another, do hard penance for seven years or light for fifteen. Egbert's Excerpt. 122, A.D. 740: A canon says: If a woman depart from her husband

allowed—(1) if the wife has been outraged against her will (216); (2) if the husband has been guilty of adultery by means of a deception practised on him (217); (3) if both parties are equally guilty (218); (4) if the husband has been the cause of the wife's adultery (219); or (5) if the husband has condoned it after being aware of its existence (220).

34. Questions of divorce and separation from bed and board are always accounted among the most difficult matters to be decided by ecclesiastical judges, and are therefore withdrawn from the cognisance of all inferior ordinaries (221), and to prevent collusion (222) such cases may not be gone into without the presence of a so-called defender of marriage. At his instigation a decision may be reviewed at any time, even after two previous sentences (223).

in contempt of him, refusing to return and be reconciled to him, he may take another wife after five or seven years, with the bishop's consent [dispensation], if he cannot contain. But let him do penance for three years, or even so long as he lives, because he is convicted of adultery by the sentence of the Lord. Pastor Hermas ap. Gratian Caus. XXXIV. Qu. II. c. 7, quoted note 190. See notes 73 and 96.

(216). Augustin ap. Gratian Caus. XXXII. Qu. V. c. 3; Innocent III. in Decret. Lib. IV. Tit. XIII. c. 6.

(217). Concil. Tribur. A.D. 895, *Ibid.* Caus. XXXIV. Qu. I. c. 6.

(218). Augustin ap. Gratian Caus. XXXII. Qu. VI. c. 1: Whoever wishes to put away his wife because of fornication, must first show that he is himself free from fornication. Alexander III. in Decret. Lib. IV. Tit. XIX. c. 4 and 5; Innocent III. *Ibid.* Lib. V. Tit. XVI. c. 6 and 7.

(219). Innocent III. in Decret. Lib. IV. Tit. XIII. c. 6.

(220). Chrysostom ap. Gratian Caus. XXXII. Qu. I. c. 4.

(221). Alexander III. in Decret. Lib. IV. Tit. XIV. c. 1: Matrimonial causes may not be heard by any but only by discreet judges, who have power of judging and are not ignorant of canonical rules. Const. 20 Langton, A.D. 1222: That rural deans presume not to hear matrimonial causes. Const. 23 Otho, A.D. 1237: That matrimonial causes, which are to be handled with peculiar deliberation and diligence, be committed to prudent and trusty men, and such as are skilled in the laws. Lynd. 79.

(222). Coelestin. III. in Decret. Lib. IV. Tit. XIII. c. 5.

(223). See *Judgments*. Devoti Lib. II. Tit. II. § 126. Modern statutes forbid commissions of review in this country.

## VIII.

## ECCLESIASTICAL SACRAMENTS.

1. Besides the sacraments which are in themselves means of grace, because they have been directly or indirectly ordained by Christ for that purpose, there are other sacramental signs used in the Church which are remotely means of grace, because, through the sympathy and compassion of the faithful (1), they are sanctified by the word of God and by prayer (2). In contrast to the greater sacraments these may be termed ecclesiastical sacraments. They include (1) sacramentals, (2) benedictions, and (3) suffrages. With them may be grouped (4) indulgences, although they are not properly sacraments, but acts of jurisdiction taking effect in the inner tribunal.

### Sacramentals.

2. A sacramental (3) may be defined to be any outward sign or thing which is not in itself a means of grace (4), but may become such if sanctified by prayer, provided it is properly

(1). Eph. II. 21, 21; Iren. Haer. II. 31, 3: In the Church, sympathy and compassion, and steadfastness and truth, are displayed for the aid and encouragement of mankind.

(2). 1 Tim. IV. 5.

(3). Ferraris Peccatum, no. 53, uses sacramentalia in the sense that sacramenta was used in former times, and states that sacramentals (sacramentalia) are so called because they are habitually employed for making or administering sacraments, such as the sign of the cross and benedictions, . . . or because they imitate the virtue of sacraments. Collet de Sacram. c. 7, art. 2, defines sacramentals as "things (and by things acts are understood) ordained for the worship of God by some religious rite, and by the common persuasion of the faithful serving in a special manner for man's sanctification." The editors of the Cursus Completus of Migne, col. 1550, note 1, say, "Sacramentals are certain things or actions ordained by the Church, and consecrated to produce certain spiritual effects."

(4). Liebermann VI. 35, points out that although the Church might have had the power of constituting sacraments, yet it is nowhere stated that it has, neither does the belief of the Church claim for it such a

used by those who are within the communion of saints. There are generally said to be three forms of words and three material things which serve for sacramentals (5); there may, however, be others. The forms of words are—(1) the Lord's Prayer (6), or any other public prayer prescribed for use for some definite object; (2) the public confession prescribed to be used in the Eucharistic service and at morning and evening prayer (7); and (3) the various benedictions given by bishops, abbots, and presbyters. The material things are—(1) holy water (8), (2) the eulogies or benediction-bread and wine, and (3) almsgiving undertaken in obedience to a precept (9).

3. All ecclesiastical sacraments depend for their efficacy upon the prayers of the faithful; hence they can only be means of grace to the extent to which they are intended by the Church to be such. Being usually limited to those in a state

power. Hence sacramentals are (1) not of Christ's institution, and (2) do not carry with them Christ's promise of sanctifying grace.

(5). They are commemorated in the line—

Orans, tinctus, edens, confessus, dans benedicens.

(6). Cyprian de Orat. Dom. c. 9, speaks of the sacramental value of the Lord's Prayer (sacramenta orationis dominicae). Augustin ap. Gratian Caus. XXXIII. Qu. III. Dist. III. c. 20: As to the daily lighter and lesser shortcomings without which this life cannot be led, the daily prayer of the faithful makes satisfaction. Concil. Tolet. IV. A.D. 633, Can. 10, insists on the daily use of the Lord's Prayer for this purpose. See *Baptism*, § 27.

(7). Const. 5 Reynolds, A.D. 1322. Lynd. 242 says the general confession is said at mass, at prime, and at compline.

(8). Concil. Agath. A.D. 506, *Ibid.* I. Dist. I. c. 64, orders penitents to be sprinkled with holy water. Gregory to Bishop Mellitus of London, A.D. 601, in Baeda I. 30, orders heathen temples to be reconciled by being sprinkled with holy water. Theodori Poenit. II. 1, 1, A.D. 673, in Haddan and Stubbs III. 191: Those who live in houses may sprinkle them with holy water as often as they like, and when you consecrate the water first make a prayer. Athelstan's Law 8, A.D. 925; Edgar's Law 43, A.D. 960; Const. 22 Boniface, A.D. 1261, orders the benefice of the holy water to be conferred on clerks. Const. 15 Peckham, A.D. 1281; Lynd. 142.

(9). Cyprian de Orat. Dom. c. 32: Prayer is made effectual by fasting and almsgiving. Concil. Clovesho. A.D. 747, Can. 26, 27; Concil. Chelsea A.D. 816, Can. 10, prescribes such almsgiving for the benefit of others.

of grace, they are efficacious to remit venial but not mortal sins; for the latter the sacrament of penance is provided (10). Nevertheless there are certain sacramentals instituted for persons and things outside the state of grace, such as (1) exorcised salt (11) and exorcised oil (12), for the benefit of catechumens; (2) ashes for the reclamation of penitents; and (3) hyssop for removing the stain from desecrated places and things. All sacramentals have a certain efficacy of their own, because they carry with them the benefit of the prayers of the Church. Hence it is not a matter of indifference whether the sacramental signs are actually hallowed or whether they are only erroneously believed to have been hallowed (13).

4. Holy water is water mixed with exorcised salt (14), and blessed by a bishop or presbyter, to cleanse and preserve those sprinkled with it from all impurity of the flesh or spirit. Its use is said to have been introduced by Alexander I. in the second century (15). It is usually blessed every Sunday, so that the altar and all who are present may be sprinkled with it before the solemn Eucharist commences. Formerly it was the custom to carry it in procession throughout the district, and to sprinkle with it the faithful who were unable to assemble in

(10). Const. 5 Reynolds, A.D. 1322: Let not a priest think as some do by mistake, that mortal sins are blotted out by the general confession. Lynd. 237, says that mortal sins are not forgiven in a non-sacramental general confession, so far as the power of the keys is concerned, but venial sins are. *Id.* 242.

(11). Concil. Carthag. III. A.D. 397, Can. 5: On the most solemn Paschal days let no sacramental sign be given to catechumens save the accustomed salt. Augustin de Peccat. Mer. et Remiss. II. 26: That which catechumens receive, although it is not the Body of Christ, is holy—more holy than the food on which we live—because it is a sacramental sign. Leofric Missal 249, gives the form for exorcising the salt. Edgar's Law 43, A.D. 960; Const. 27 Peckham, A.D. 1281.

(12). See *Baptism*, note 34; *The Sacraments*, § 24.

(13). Craisson, § 4458.

(14). Pseudo-Isidor. ap. Gratian III. Dist. III. c. 20: Water sprinkled with salt we bless for the people to use. Rabanus *Ibid.* III. Dist. IV. c. 64.

(15). Walafrid Strabo c. 28.

Church. Those who carried it round were called water-bearers (aquaebajuli), and received a small fee for the service, and several English constitutions require the benefice of the Holy Water (as this privilege was called) to be conferred on none but poor clerks (16).

5. The eulogies (17) or benediction-bread and wine, called by the Greeks *antidoron*, represent that part of the Lord's Supper which was formerly called the ἀγαπή or love-feast (18), and consist of bread and wine which have been solemnly offered to God with prayer by the faithful, but have not received the divine invocation whereby they become the Eucharist (19). It

(16). Const. 22 Boniface, A.D. 1261; Const. 15 Peckham, A.D. 1281; Lynd. 142; Le Brun I. 88.

(17). Gregory Nazianzen Orat. 19, states that he was in the habit of blessing white loaves marked with the sign of the cross. Socrates VII. 12, relates that, in 412 A.D., Chrysanthus, the Novatian Bishop of Constantinople, would receive nothing from the Church but two loaves of benediction bread (ἄρτους εὐλογιῶν). Concil. Laodic. A.D. 363, Can. 32; Concil. Martini A.D. 572, Can. 70.

(18). As appears from 1 Cor. XI. 20, 21, it was considered part of the Lord's Supper. Tertullian Apolog. c. 39: Our feast explains itself by name. The Greeks call it agape [*i.e.*, love]. . . . The participants before reclining taste first of prayer to God. As much is eaten as satisfies the cravings of hunger; as much is drunk as befits the chaste. Concil. Laodic. A.D. 363, Can. 28, forbids the agape to be celebrated in churches, repeated by Concil. Trull. A.D. 692, Can. 74. Concil. Carthag. III. A.D. 397, Can. 20: Let no bishop or clergy hold repasts in Church unless travellers be then entertained from the necessity of showing hospitality. Can. 29: That the sacrament of the altar be not celebrated by men unless fasting, except on the one anniversary day whereon the Supper of the Lord is celebrated. It is described by Hieronym. in Epist. I. ad Cor. c. 11, and Chrysost. in Epist. I. ad Cor. Hom. 27. Augustin contra Parmenian. Lib. III. c. 2: Why, then, do ye not only take the food of your table with such persons against the Apostle's precept, but also communicate the Supper of the Lord's Table? The benediction-bread was given in the British Church—see H. and S. I. 259, 638; and also among the Saxons —Thorpe II. 151, 160: Come neither to loaf nor to housel.

(19). Apost. Const. VIII. 31 directs the offered but unconsecrated bread to be divided among the clergy. Simeon of Thessalonica de Templo. p. 230, and Le Brun II. 417, says that among the Greeks those who receive it treat it with great respect as having been offered to God with prayer in

was the custom in the fourth century for bishops to send the eulogies to one another at Christmas and Easter as a token of membership in the One Body (20), and sometimes even to send the Eucharist (21). In later times, when discipline grew slack, the eulogies were distributed to the faithful who, from whatever cause, were prevented from partaking of the Eucharist, and in small places they were often distributed on Sunday when there was no Eucharistic consecration (22). The distri-

the service of the προθεσις, and kiss the hand of him who gives it to them. Cavalieri Op. IV. 47. According to Duchêsne, the eulogies are blessed in the Roman rite towards the close of the canon at the words, Per quem haec omnia, Domine, semper bona creas, sanctificas, vivificas, benedicis et praestas nobis.

(20). Paulinus of Nola Epist. v. 21, in Migne LXI. 177, sends bread to Bishop Severus, to be used for eulogies. Augustin Ep. 31 (al. 34) ad Paulin. : The bread which we have sent will become a truer benediction-bread (uberior benedictio) by your charity. Paulin. Epist. 41 ad August. : One loaf which we have sent to your charity in token of unanimity, we pray that you will bless on receiving it. Paulin. Ep. 45 ad Alip.

(21). See *The Eucharist*, note 312.

(22). Leo IV. A.D. 850, Hom. de Cura Past. : On festal days distribute the eulogies to the people after masses. Concil. Nannet. A.D. 895, in Regino l. c. 332 : Out of the oblations which are offered by the people and are left unconsecrated, the priest shall bless and distribute pieces, after the Mass is over, to those who have not communicated. John Belethus in Bridgett's Hist. of the Eucharist II. 39, 259, attributes to St. Benedict the custom of making a little lunch (parvum prandiolum) in Church, on Easter Day, of the bread and wine, after the Communion. Syn. Dunelm. A.D. 1220, in Wilkins I. 580 : When women come to be churched after child-birth, priests must only give them the holy loaf, and not the Body of Christ, unless they expressly ask for it and have made their confession. The directory of the monastery of Bec in Giles' Lanfranci Op. orders that on Maundy Thursday the poor whose feet are to be washed shall be communicated with benediction-bread only. Const. 4 Edmund, A.D. 1236, forbids priests' concubines to be admitted either to the pax or to the benediction-bread. A synod of 1255, in Martene de Antiq. Rit. l. c. IV. 10, orders that on Easter Day the Eucharist be not given to children, but only the blessed bread. Const. Giles Saris. A.D. 1256, in Wilkins I. 714, requires the parishioners to provide the holy loaf every Sunday. Const. 27 Peckham, A.D. 1281. Conf. Const. 1 Peckham, A.D. 1281. During the interdict in 1207 A.D., according to the Dunstable Annals in Bridgett II. 284, when the Eucharist could not be celebrated, blessed bread and wine

bution was, however, confined to the faithful, neither catechumens nor penitents, whilst undergoing penance, being allowed to participate in them.

### Benedictions.

6. A benediction is an invocation of God to obtain from His Almighty power the virtue necessary to produce some desired effect, and to impart holiness or grace to some person or thing (23). Such an invocation carries with it more or less effect according to the degree in which it reflects the unanimous mind of the Church, and is made by one who is the authorised exponent of that mind in intercession (24). (1) One which expresses the unanimous mind of the whole Church is

were allowed to be distributed after the sermon. The Register of Bishop Stapledon of Exeter, p. 296, A.D. 1310, contains a complaint of the men of Norton, setting forth that that chapelry was served by a chaplain, who every Sunday read and explained the Gospel and gave them the benediction-bread, but was only allowed to offer the Eucharist at Christmas and Easter. The Book of Evesham, p. 45, directs it to be blessed and given to bridegroom and bride after their marriage. Maskell Mon. Rit. I. CCCXVIII. (ed. 1882).

(23). Le Brun III. 242. Thus Christ blessed the bread, *i.e.*, invoked the Father to multiply it (Math. XIV. 19; Mark VIII. 6). Thus, before raising Lazarus, He invoked the Father and then rendered thanks (John XI. 41).

(24). Tertullian de Orat. c. 27: Every institution is excellent which for the extolling and honouring of God aims unitedly to bring Him enriched prayer as a choice victim. Cyprian de Unit. Eccl. c. 12: If two of you shall agree on earth, . . . it shall be given you. . . . He placed agreement first. He has made the concord of peace a prerequisite [Tertullian de Orat. c. 18: What prayer is complete if divorced from the holy kiss?]. But how can he agree with any one who does not agree with the body of the Church? *Ibid.* c. 25, commenting on Acts I. 14, These all continued with one mind in prayer, observes: And thus they prayed with effectual prayers. Thus they were able with confidence to obtain whatever they asked from the Lord's mercy. See *Baptism*, notes 46 and 219. *Id.* Ep. 7 (Oxf. 11), 3: If two of one mind can do so much (Math. XVIII. 19), what might not be effected if the unanimity prevailed among all? Ep. 56 (Oxf. 60), 2: Whatsoever is at the same time sought for by all, the God of Peace will grant to the peaceful. De Op. et Elemos. 4: When Peter had brought to the Lord the prayers intrusted to him.

called a canon of benediction (25). (2) One which represents the united suffrages of the members of some part of the Church is called a collect of benediction (26). (3) One in which the benefit of the prayers of a single fellow-member is communicated is called a suffrage of benediction (27).

(25). The Jews had a prayer summarising the prayers of the synagogue, called the fountain or "the summary." The Lord's Prayer is no other than the divinely sanctioned "summary," or collecta oratio, and was used as such at the conclusion of every service and of the Eucharistic consecration. Ordinarily, the term collect is confined to summaries of prayer used at the presbyter's discretion; the Lord's Prayer and the Eucharistic prayer being called canons of benediction. Ignat. Eph. c. 5: If the prayer of one or two possesses such power, how much more that of the bishop and the whole Church? Ad Magnes. c. 7: Let there be one prayer in common.

(26). Tertullian Apol. c. 39: We meet together as an assembly and congregation, that offering up prayer to God as with united force we may wrestle with Him in our supplications. Cod. Eccl. Afric. Can. 103, directs prayers to be used in public which have been collected (collectae) for common use by the better instructed. Concil. Agath. A.D. 506, Can. 30, directs every service to be concluded with the bishop's summing up prayer (collecta oratione), which Concil. Barcin. A.D. 540, Can. 2, calls a benediction. *Id.* Can. 5 directs presbyters colligere orationes in ordine when the bishop is present. Concil. Paris III. A.D. 557, Can. 7: Let no one who is excommunicated be admitted to the collective prayers (colligatur). Theodori Poenit. II. IX. 2, in H. & S. III. 197, directs a desecrated church to be reconciled aliqua collectione, and II. II. 14 *Ibid.* III. 192 says that deacons may not say the *collectio*. Amalarius de Eccl. Offic. Lib. III. c. 9 says that the presbyter's prayer is called both *benedictio* and *collectio*. Walafrid Strabo in Migne. CXIV. p. 920: Collecta dicuntur quia necessarias petitiones compendiosa brevitate colligimus. Micrologus, A.D. 1077, c. 3, says that "a collect is so called because the presbyter who acts for the people sums up and concludes in it the prayers of all," and that properly there are only two collects in the Roman Liturgy, one with which the private prayers before the offering are summed up [now called the collect], the other with which the private prayers after the communion are summed up [now called the post-communion]. To these must be added the canon of benediction. See *The Eucharist*, § 13. The Mozarabic rite consisted of nine collects with their introductions and farsings.

(27). Tertullian de Bapt. c. 8 speaks of the sacramental rite in which Jacob blessed his grandsons. Bishop Abercius, in the second century, ends his own epitaph with the words, Let every friend who observeth this pray for me. Archaeolog. Cambrensis, fourth series, V. 245, contains an ancient inscription, in Cardiganshire: Whoever reads this name let him say a benediction for the soul of Hiroidel. See *The Sacraments*, note 87.

7. Canons of benediction are used by bishops as officers of the whole Church, but in certain cases they may be used by presbyters specially deputed to act for the bishop. Those which are given in the most solemn way with the use of chrism, such as the benedictions at confirmation, ordination, and the consecration of Churches, altars and chalices, are exclusively reserved to bishops (28). Collects of benediction, in which the prayers of a local church are compendiously summed up, are used by presbyters, such as the blessing of holy water, of nuptials (29), of eulogies, of a Church or person, the ordinary salutation given by the priest in the Eucharist (30) or at other times (31), as to a woman after child-birth on her reappearance in Church (32). Simple suffrages are used by all the faithful, either to one another, as in the Easter salutation and the kiss of peace (33), or by each one to himself, as in signing with the sign of the cross (34), or doing anything "in the name of Christ" (35).

(28). Innocent III. in Decret. Lib. I. Tit. XV. c. 8, as interpreted by the Congregation of Rites, May 16, 1744, No. 4010; 5 and 6 in Craisson, § 4469.

(29). Stat. Eccl. Ant. A.D. 505, ap. Gratian I. Dist. XXIII. c. 33; Let the bride and bridegroom when they receive the nuptial blessing be offered by their attendants.

(30). Concil. Brac. I. A.D. 563, Can. 3, aiming at abolishing the Gallican practice in favour of the Roman in Portugal, forbids bishops to give the triple benediction, whereas presbyters only use the form, The Lord be with you.

(31). Concil. Epaon. A.D. 517, Can. 35, requires, all persons of quality, wherever they may be, to repair to the bishop on Easter Eve and Christmas Eve to receive a solemn blessing.

(32). Theodori Poenit. I. XIV. 18 in Haddan and Stubbs III. 189, forbids a woman to enter Church for forty days after child-birth. Gregory ap. Gratian I. Dist. V. c. 2, and Innocent III. A.D. 1198, in Decret. Lib. III. Tit. XLVII. declare it to be lawful. English use, however, did not allow it, as appears from Const. 7 Mepham. A.D. 1328; Craisson, § 3317.

(33). Tertullian de Orat. 18: Such as are fasting withhold the kiss of peace, which is the seal of prayer. Apost. Const. VIII. 11: Let the deacon say, Salute one another with the holy kiss, and let the clergy salute the bishop. Decret. Lib. V. Tit. XXXIX. c. 29: Const. 6 Edmund, A.D. 1236; Lynd. 198, 338.

(34). See *The Sacraments*, § 26, note 101.

(35). Acts III. 6: In the name of Jesus rise up and walk; IV. 7 and 12

### Suffrages.

8. A suffrage is, properly speaking, a vote recorded for another at an election. By theologians it is used to describe a prayer which is offered, or an act which is done by one Christian on behalf of another (36), in the hope that God will be pleased to accept it as the act of the other by reason of the solidarity of the common Body and the intimate connection which exists between all its parts (37). For this effect to be

30; xvi. 18; 1 Cor. vi. 11. Tertullian Apol. c. 23: All the authority and power we have over demons is from naming the name of Christ. Cyprian Ep. 73 (Oxf. 74), 5: [Stephen and those with him] attribute the effect of baptism to the majesty of the name. Treatise on Rebaptism, A.D. 255, c. 8: Invocation of the name of Jesus ought not to be thought futile by us, on account of the power of that name in which all kinds of power are accustomed to be exercised, and occasionally by those outside the Church; c. 11: Certain things are conceded to the very name only of the Lord. In Acta Perpetuae, A.D. 202, c. 3: In the name of the Lord Jesus Christ the demon shall not hurt me. Amalarius de Eccl. Offic. i. c. 12: The oil of the sick has no proper office, but only, In the name of the Lord.

(36). In Gen. xviii. 32 God declares that for the sake of ten righteous He will not destroy the city. 2 Kings xix. 34: I will protect this city for David My servant's sake. Jerem. v. 1; Job xlii. 9, 10. In 2 Cor. viii. 14, when St. Paul solicited alms on behalf of the Christians of Jerusalem, he promised that in return their abundance [*sc.*, in prayers and good works] should supply the Corinthians' want. Clem. Strom. vii. 13: [The true Christian] exercises beneficence well, praying that he may get a share in the sins of his brethren in order to confession and conversion on the part of his kindred, and eager to give a share to those dearest to him of his own good things. Rom. ix. 3: I could wish myself accursed for my brethren's sake; c. 14: Matthew the apostle said that "if the neighbour of an elect man sin, the elect man has sinned; for had he conducted himself as the Word prescribed, his neighbour would have so reverenced his life as not to sin. Cyprian Ep. 66 (Oxf. 68) says that "the Novatians have departed from the agreement of our body, holding that the comforts and aids of Divine love . . . are closed to the penitent. The Book of Evesham, p. 117, directs the brethren to say the Creed on behalf of the dying that the faith of the brethren may assist the departing by way of suffrage (ut fraterna fides suffragium conferat migraturo).

(37). Gal. vi. 2: Bear ye one another's burdens. Eph. iv. 12; 1 Cor. xii. 13, 21; Ambros. in Ps. cxix. 63, Op. ii. 563: As we call each member

possible two conditions are necessary: (1) both the giver and the receiver of a suffrage must be themselves at the time within the communion of saints; (2) the object of the suffrage itself must be lawful.

9. Suffrages are of three kinds: (1) those made in the Eucharistic service, (2) those made by supplication at other times, and (3) those made by doing vicarious works of mercy. The most effectual act of spiritual aid which can be rendered to another consists in interceding for him in the Eucharistic service (38). When the suffrages of many are united on behalf of some one person or object, the collective and unanimous prayer carries with it the Divine promise of being heard, so far as it is in accordance with the ascertained will of God (39). Such united prayer, when coupled with an offering and made for the dead, is called a commendation (40). The combination of suffrages in the Eucharist for particular persons and objects is not, however, allowed, unless with the sanction of the Church (41). Hence the commemoration of those who have died impenitent (42) or rebellious (43), whilst offending against

a partaker of the whole Body, so we are conjoined to all those who fear God, so that no one may say to another, You are not of my body. Iren. IV. 20, 12, says that in this way Hosea's wife of whoredom was sanctified by intercourse with the prophet, the Ethiopian bride by Moses as her husband, Rahab the harlot by the spies whom she took in.

(38). Cyprian de Unit. Eccl. c. 12; The Lord said, If two of you shall agree on earth, . . . it shall be given you, . . . showing that most is given not to the multitude but to the unanimity of them that pray. *Ibid.* c. 25: These all continued with one mind in prayer, and therefore they prayed with effectual prayers. Acts IV. 32.

(39). Rom. XV. 30; James V. 16.

(40). Concil. Carthag. III. A.D. 397, Can. 36; Concil. Tolet. IV. A.D. 633, Can. 13: Hymns are composed like private prayers (preces), collects (orationes), commendations, and benedictions (manus impositiones).

(41). Codex. Eccl. Afr. Can. 103, directs no prefaces, commendations, or benedictions to be used at the altar, except such as have been sanctioned in council.

(42). Cyprian Ep. 65, A.D. 249, ap. Gratian I. Dist. LXXXVIII. c. 14: Since Victor, contrary to the rule lately made in council by the bishops (sacerdotes), has dared to appoint Geminius Faustinus, a presbyter, his executor, it is not allowed that any offering be made by you for his

the laws of the Church, is forbidden. The commemoration of a tolerated person is, however, permitted, but an offering may not be made for such an one (44); and neither a deceased nor a living catechumen may be commemorated in the offering of the faithful (45). With these exceptions, suffrages may be made in the Eucharistic service, and works of mercy done for all Christians, including infants (46) and lunatics, the dead as well as the living (47), and even those apparently not in a

repose, nor any prayer be made in the Church in his name. Augustin Serm. 172 (al. 32): For those who have died without faith, which worketh through love, such offices are in vain rendered by their friends. Egbert's Excerpt. 154, A.D. 740: Whatever clerk dies in war, intercession should not be made for him, either by an offering or by prayer. Concil. Chelsea A.D. 787, Can. 20: If any man die without repentance and confession, prayers must not be made for him.

(43). Theodori Poenit. I. v. 12, in H. & S. III. 181: If a presbyter celebrate mass, and another who reads out the names of the dead includes those of heretics, let him do penance for a week. If any one has instituted a Mass for a dead heretic, . . . let him do penance.

(44). According to Liguori VI. 209, and VII. 164; Craisson, § 3474, however, relying on 1 Mac. XII. 11, and 1 Tim. II. 1 and 2, would allow it in these cases, which seems to ignore the meaning of the offering.

(45). Concil. Araus. A.D. 441, Can. 20: Let catechumens as far as possible be separated from the blessing of the faithful, even in domestic prayers, and be exhorted to withdraw and receive a separate signing and blessing apart. Concil. Brac. I. A.D. 563, Can. 17: Neither commemoration in the oblation, nor the office of singing is allowed for catechumens dying without baptism.

(46). Theodori Poenit. II. v. 77, A.D. 673, in H. & S. III. 194.

(47). Stat. Eccl. Ant. A.D. 505, Can. 95: They who refuse or only reluctantly make offerings for the dead should be excommunicated as slayers of the needy. Apost. Const. VIII. 42: Let alms be given to the poor out of his goods for a memorial of him. Gregory III. to Boniface, A.D. 732, ap. Gratian Caus. XIII. Qu. II. c. 20: Holy Church holds that each one may offer oblations for his dead who are truly Christians, and that a presbyter may commemorate them; and although we are all subject to sins, it is fitting that a presbyter should commemorate and intercede for all deceased Catholics; but for the impious, even if they were Christians, this is not lawful. Florus, A.D. 870, de Celeb. Miss.: We can only pray for those who die in the faith, and whom we regard as members of Jesus Christ; whose works require to be purified before they enter into the

state of grace, such as suicides, provided they were previously persons of good life (48), and penitents, provided they were observing the rules of penance (49).

10. Apart from the Eucharist, suffrages may be given either singly or unitedly to fellow-Christians, by saying the Lord's Prayer and the Psalter, or portions of it, on their behalf—the Lord's Prayer because the petition for forgiveness extends to all members of the Christian brotherhood (50), the Psalter because it is the intercessory utterance of the Son of God to the eternal Father for all the members of His Body (51). Prayers may even be said and works of mercy done for those excommunicate, for catechumens and infidels (52), and for the Jews who crucified Christ; but the solemn offering of prayers for such is in the West confined to one day in the year, Good Friday (53); and although ordinarily prayers

everlasting habitation to which none are admitted unless they are purified from every trace of sin. See Le Brun, I. 514.

(48). Theodori Poenit. II. X. 1, in H. & S. III. 197, and II. X. 4, *Ibid.* p. 198.

(49). Stat. Eccl. Ant. A.D. 505, ap. Gratian Caus. XXVI. Qu. VII. c. 6: Should penitents who carefully keep the rules of penance accidentally die on a journey, . . . their memory may be commended to God in oblations and prayers.

(50). Cyprian de Orat. Dom. c. 8: Each one does not ask that only his own debt should be forgiven him; c. 17: We so pray and ask by the admonition of Christ as to make our prayer for the salvation of all men. Codex. Eccl. Afric. Can. 115, 116 censures the view that the Lord's Prayer is used by the saints only by way of intercession for others. Concil. Tolet. IV. A.D. 633, Can. 10; Concil. Chelsea A.D. 816, Can. 10, directs ten belts of Lord's Prayers to be said for a deceased bishop.

(51). Hence Richard Hampole, in Lynd. 184, says: The chanting of Psalms puts evil spirits to flight, brings angels to our assistance, takes away sins, appeases God, and leads to perfection.

(52). Cyprian de Orat. Dom. c. 17: We should ask, moreover, for those who are still on earth and have not yet begun to be heavenly, that even in respect of these God's will should be done. Theodori Poenit. II. XIV. 2, in H. & S. III. 202: He who fasts for a dead man helps himself; whether he helps the dead is known only to God.

(53). In Spain, according to Concil. Tolet. IV. A.D. 633, Can. 6, and Duchêsne 425, this was called Indulgentia. The Western collects

may be said for heretics, yet they may not be said with them (54).

## Indulgences.

11. An indulgence, according to the historic meaning of the term, is a remission of part or discharge from the whole of the outstanding canonical penances which have been authoritatively imposed on an offender for the vindication of the Church's holiness before his restoration to communion (55). In this

provided for this purpose are in Leofric's Missal, p. 95, 96. Before each collect the deacon said: Let us kneel; but he omitted this invitation before the prayer for the Jews. Teaching of Addaeus, p. 31: With the Jews, the crucifiers, we will have no fellowship.

(54). Theodori Poenit. I. v. 4 l. c.; III. 181: If any one prays with a heretic as with a Catholic, let him do penance for a week. Concil. Antioch. A.D. 341, Can. 2; Concil. Brac. II. A.D. 572, Can. 84; Stat. Eccl. Ant. A.D. 505, Can. 72: Cum haereticis neque orandum neque psallendum.

(55). Ps. xciv. 12; 1 Cor. xi. 32; Heb. xii. 6; 1 John iii. 3; Rev. iii. 19. In 1 Cor. v. 3–5 St Paul decides (*κέκρικα*) in the name of Christ, in a consistorial gathering of the Corinthians (*συναχθέντων ὑμῶν καὶ τοῦ ἐμοῦ πνεύματος*), at which he is present in spirit with the power of Christ, to deliver the incestuous Corinthian to Satan for the destruction of the flesh, that his spirit may be saved; but the following year (2 Cor. II. 6) declares that punishment has been sufficient to produce its effect (*ἱκανὸν τῷ τοιούτῳ ἡ ἐπιτιμία αὕτη*), and ver. 10 remits the rest (*ᾧ κεχάρισμαι*). Concil. Elib. A.D. 305, ap. Gratian Caus. xxxi. Qu. I. c. 8: A time of penance is appointed for those who contract a second marriage, but their conversation and faith may abbreviate it. Concil. Nic. A.D. 325 Can. 12: The bishop may use some favour towards those who demonstrate their conversion in fear, and tears, and patience, and good works, so as after the determined time of being hearers, to let them partake of the prayers, and determine yet more favourably concerning them. Concil. Ilerd. A.D. 523, Can. 5 *Ibid.* 1 Dist. l. c. 52: Let it be within the bishop's power to suspend only for a short time such as truly grieve, and to separate the remiss for a longer period. Theodori Poenit. I. III. 3 in Haddan and Stubbs III. 179, says that by making restitution, the time of penance after stealing may be abbreviated. I. IV. 1 *Ibid.* p. 180 says that after murder it may be reduced one-half by paying the were-geld. I. IV. 5 and I. XII. 5: It is in the bishop's power to relax.

respect it belongs to the outer forum, and resembles the remission of the wergeld, or satisfaction required by the civil community for any violation of its laws (56), and consists either (1) in shortening the time of penance (57), or (2) in making the manner of it lighter (58). Such indulgences were conceded in early days either upon general request to one who truly repented of his offence, and had given evidence of amendment (59), or upon the particular request of a martyr or confessor called letters of relief (*libelli*) (60).

12. By a stretch of mercy indulgences soon came to be

(56). Cyprian de Laps. c. 23: Some are punished that others may be corrected. Tertullian de Judic. c. 2: Why then do they grant indulgences under the name of repentance to crimes for which they furnish remedies? Augustin ap. Gratian Caus. XXXIII. Qu. III. Dist. 1. c. 85: Let him do that [penance] which shall not only be of use to procure his own salvation, but shall also be of use to others by way of example. Alfred's Law, A.D. 877: Then were many synods of holy bishops where they, out of that tenderness which Christ taught towards the greatest crimes, decreed that secular lords might take pecuniary fines, with a reserve to the sin itself, except for treason. Concil. Ensham, A.D. 1009, Can. 32: As men are more potent . . . so shall they make the deeper satisfaction and pay the dearer for their crimes. Alexander III. in Decret Lib. v. Tit. XXXVIII. c. 9.

(57). Concil. Elib. A.D. 305, quoted note 55. Leo *Ibid.* Caus. XXVI. Qu. VII. c. 2 permits the term to be abridged so that the whole term be not remitted. It is otherwise with public crimes. Lynd. 331.

(58). Both kinds are mentioned by Gregory ap. Gratian Caus. II. Qu. 1. c. 6; Devoti Inst. Lib. II. Tit. II. § 120.

(59). As in the case of the incestuous Corinthian already referred to, note 56, and under *Order*, note 19. Tertullian de Pudic. c. 13: It is usual for the greatest indulgences not to be granted without public proclamation. Augustin ap. Gratian I. Dist. 1. c. 25. Ambros. *Ibid.* Caus. XXIII. Qu. IV. c. 33: When indulgence is granted to one who is not deserving, does it not excite a large number to the contagion of relapse?

(60). Tertullian ad Martyr. c. 1.: Some, not able to find peace in the Church, have been used to seek it from the imprisoned martyrs. And so you ought to have it dwelling with you, and to cherish it, that you may be able, perhaps, to bestow it upon others. Euseb. VI. 42 mentions the indulgences of Dionysius after the Decian persecution. Cyprian Ep. 11, 21, 22, 23, complains that indulgences were systematically granted in North Africa. Ep. 16 gives a copy of one of the libelli, or tickets of relief granted by certain martyrs.

systematically granted (61), and ultimately custom allowed (1) the severer bodily penances to be everywhere, and in all cases of private offences (62), commuted into almsgiving (63), prayers, saying of Psalms (64), and pecuniary pay-

(61). Tertullian de Pudic. c. 1, writing as a Montanist, complains: I hear that an edict has been issued, and that a peremptory one. That bishop of bishops [Zephyrinus] decrees: I forgive the sins of adultery and fornication to those who have performed penances. *Ibid.* c. 22; Cyprian ap. Gratian I. Dist. l. c. 26: Where can the medicine of indulgence profit if even the physician himself makes easy way for new dangers? Concil. Ancyr. A.D. 314, *Ibid.* c. 22 and 23, allows a bishop to grant an indulgence to a lapsed deacon. Leo *Ibid.* c. 67; Concil. Chalcedon A.D. 451, Can. 16, *Ibid.* Caus. XXVII. Qu. I. c. 22, orders monks and nuns who marry to be excommunicated, but "we leave to the bishop of the place power of indulgence (ἔχειν τὴν αὐθεντίαν τῆς ἐπ' αὐτοῖς φιλανθρωπίας) in such cases. Gratian Caus. II. Qu. III. c. 8: An indulgence does not take away the infamy of the crime, but gives relaxation from punishment. Theodori Poenit. I. IV. 5, A.D. 673, in Haddan and Stubbs III. 180 and I. XII. 5 *Ibid.* 187 says, "To indulge is in the bishop's discretion." Nicolaus, A.D. 864, ap. Gratian Caus. XXXIII. Qu. II. c. 15; Concil. Tribur. A.D. 895, *Ibid.* Caus. XXVII. Qu. I. c. 12: Let the bishop of the place have power to indulge (largiri) the mercy of humanity. Henry's Crusade, A.D. 1188, Can. 3; Honorius III. in Decret Lib. I. Tit. XI. c. 15, speaks of "deserving our indulgence" (gratiam nostram).

(62). Isidor. A.D. 636, ap. Gratian Caus. XI. Qu. III. c. 12, and Concil. Clovesho A.D. 747, Can. 26, forbad them altogether. Const. 19 Othobon. A.D. 1268, forbids them for any crime that is mortal or notorious. Const. 9 Stratford, A.D. 1342, after two relapses. Alexander III. in Decret. Lib. V. Tit. XIX. c. 4: Since both Testaments abhor usury, we cannot grant an indulgence in this case.

(63). Although alms are enjoined by Ambros. ap. Gratian Caus. XXXIII. Qu. III. Dist. I. c. 76, 49, yet the substitution of them is forbidden by Concil. Clovesho A.D. 747, Can. 26: Alms are necessary to be done daily, that so past sins may be sooner and more fully forgiven by God. . . . Let no alms be given for the making an abatement or commutation of the satisfactory fastings and other expiatory works enjoined to a man by a priest of God according to the Canon Law. Edgar's Law 49, A.D. 960: That all fasts be made meritorious by alms. Lynd. 333 discusses the value of good works to a man labouring under mortal sin.

(64). A year's penance was kept by observing the three fasting periods of forty days each, and Wednesday and Friday in each week. See Theodori Poenit. I. VIII. 11. in Haddan and Stubbs III. 184, and II. XIV. 1. *Ibid.* p. 202. Instead of these one hundred and twenty days of fasting in

ments (65), and (2) in nearly all cases of private sins permitted restoration to communion when only the smallest part of the reduced penance had been gone through. Whilst the Church thus relaxed the mortifications required from offenders, it did not conceal from them the fact that there still remained to be undergone the remedial mortifications required by divine justice to purify the soul from the taint of forgiven sin, and it is in regard to relief from these mortifications in the inner forum that the term indulgence is henceforth spoken of (66).

three periods, twelve periods of three days each were allowed to be substituted, provided each period of three days (triduum) was devoted to the recital of psalms and prayers. This was called a triduanum. Theodori Poenit. I. VI. 5, *Ibid.* 183: Theodore approved of twelve triduana doing duty for a year [of penance]; likewise of those [slaves] set free (de egressis al aegris) [he held] the value of a man or a maid to be equivalent to a year [of penance]. Baedae Poenit. X. 4, A.D. 730, *Ibid.* 333. De duodecim, triduanis says that 100 psalms with a prostration (venia) by night, and 300 Lord's Prayers (palmatae, *i.e.*, counted on the fingers) discharge a triduum of penance. Dunstan, Can. 72, A.D. 963: One day's fasting may be redeemed with a penny [equivalent to at least 2s. 6d. of present money, since the tithe of a colt was a penny] or with 200 psalms. A year's fasting may be redeemed with 30s. [equivalent to £45], or with freeing a slave that is worth that money. A man for one day's fasting may sing *Beati* [the 119th Psalm] six times, and six times the Lord's Prayer [a palmata]. And for one day's fasting let a man prostrate himself on the ground [venia] with the Lord's Prayer sixty times. And a man may redeem one day's fasting if he will prostrate himself on all his limbs to God [venia] in prayer, and with sincere grief and sound faith sing fifteen times *Miserere* [the 51st Psalm], and thus his penance for the whole day is forgiven him.

(65). Alfred's Laws, A.D. 877, and Dunstan's Canons, A.D. 963, already quoted. Const. 19 Othobon, A.D. 1268, forbids the money thus received to be applied by a spiritual judge to his own purposes. Such payments as voluntary commutations for corporal penances are allowed by 13 Ed. I. St. IV. c. 1, A.D. 1285, and 9 Ed. II. St. 1. c. 2, A.D. 1315; Const. 12 Stratford, A.D. 1343, directs them to be applied to the fabric of the church. Lynd. 261.

(66). Pseudo-Augustin ap. Gratian I. Dist. XXV. c. 5: He who puts off to another world the fruit of conversion must needs first be purged by the fire of cleansing, which, although not eternal, is yet severe. Concil. Clovesho A.D. 747, Can. 27: A man should punish sin at present in proportion to its guilt, if he desire not to be punished hereafter by the eternal

13. In this sense indulgences are not heard of before the ninth century (67). They then become prominent in connection with the fuller realisation of the doctrine of the communion of saints, which was chiefly due to the influence of the monastic orders (68). As henceforth understood, an indulgence

Judge. . . . If men promise, or believe, or act otherwise, they do not lessen sins, but add sins to sin, . . . because they dare set God's justice to sale. If divine justice can be appeased by others, why is it said by the voice of truth that it is easier for a camel to go through the eye of a needle than for a rich man to enter the kingdom of heaven, when he can with bribes purchase the innumerable fastings of others for his own crimes? . . . Let no man deceive himself. God deceives none when He says by the apostle, We shall all stand before the judgment-seat of Christ." This appears to condemn by anticipation the lightening of penance allowed to rich men by Can. 75 and 76 of Dunstan, A.D. 963. In the Martyrdom of Habib (Ante-Nicene Lib. xx.), 102, the martyr prays, May this fire in which I am to be burned serve me for a recompense before Thee, so that I may be delivered from that fire which is not quenched. Acta Justin. c. 3: It was our wish to endure tortures . . . and so to be saved, because this [enduring tortures] shall become to us salvation and confidence at the more faithful judgment-seat of Christ.

(67). Bérinzer Les Indulgences, p. 33.

(68). The charitable intercommunion and participation of prayers, good works, and penances was at first confined to societies between which existed *fraternitas* or *consortium*, called also *conventio, foedus, pactio caritatis*, and in the eleventh century *participatio* and *beneficium*. As early as 734 Baeda begs of the brethren of Lisdisfarne that he may become *familiaris vester* . . . that my name may be also placed in the book of life of your congregation. Boniface, A.D. 718, entered into a league of prayer with Berhtwald, Archbishop of Canterbury, and his clergy, which was renewed, A.D. 732, with Tatwine (Haddan and Stubbs III. 313). Aelfwald, King of the East Angles, also made brotherhood with him, A.D. 747 (Ebner's Die Klösterlieben Gebets-verbrüderungen, Regensburg, 1890). King Alred of Northumberland and his consort did the same with Lullus of Mainz, A.D. 773. Lullus entered into brotherhood with Canterbury, A.D. 754, and again, A.D. 761; with Worcester and Winchester, A.D. 754; with York, A.D. 773; and with Wearmouth, Jarrow, and Ripon. Wunibald joined in brotherhood with Monte Cassino, A.D. 761. Alcuin was admitted to brotherhood by the Synod of Frankfort, A.D. 794. At St. Gall the Liber confraternitatum shows the enrolment of the members of the monastic house of Reichenau in 800. That of Reichenau was begun in 826, and by the middle of the ninth century contained the names of more than a

is not a remission of guilt or eternal punishment, nor yet of such canonical penalties as are imposed in the court of penance *ex misericordia* rather than *ex debito*, but a relief from some part of the divine visitation which would ordinarily be required as a remedy to efface the stain of forgiven sin. Hence an indulgence (1) can only be of avail to one who is already in a state of grace—*i.e.*, to one to whom the guilt of sin and its eternal punishment have been already remitted by God's mercy (69). (2) Being an exercise of the power of binding and loosing upon earth which Christ has promised to ratify in heaven, it can only be granted by one who has authority from the Church to grant it—*i.e.*, by a lawful superior (70). (3) The granting it is an act of jurisdiction, not the administration of a sacrament (71). And (4) it derives its effect from the solidarity of the Church, and the interchange of good offices between the Head and the members and between the members themselves, or as it is popularly expressed, from the mystic treasury (72).

hundred confederated abbeys, cathedrals, or collegiate chapters, and 40,000 members. See the *Month*, July 1892, p. 355. Gradually out of these isolated groups the Catholic confraternity or communion of all saints was realised, over which the Pope alone was allowed to have full jurisdiction.

(69). Perrone Praelect. 213 defines an indulgence as a remission of the temporal penalty after the forgiveness of guilt and eternal punishment, valid before God in the inner tribunal made by the application of the treasury by a lawful superior. Béringer, p. 2, as "the total or partial remission of temporal pains due to sins already pardoned as to their guilt and eternal punishment, granted by the Church otherwise than in the tribunal of penance, by the application of the superabundant merits of Christ and the saints."

(70). Cyprian Ep. 29 (Oxf. 36), 2: If the martyrs thought that peace was to be granted to them, why did they refer them to the bishops? Alexander III. to Archbishop of Canterbury in Decret. Lib. v. Tit. XXXVIII. c. 4, says that indulgences (remissiones) which are granted at Church dedications, or to those who contribute to build bridges, or granted by those without jurisdiction, do not profit the recipients, unless they are sanctioned by their own prelates. Concil. Lat. IV. Can. 62, A.D. 1215, *Ibid.* c. 14.

(71). Lynd. 336, says that a bishop elect and confirmed can therefore grant them.

(72). Decret. Lib. v. Tit. XXXVIII. c. 15; Const. 9 Peckham, A.D. 1279:

14. By the mystic treasury is understood that happy consequence of the fellowship of saints in the communion of one body, whereby the purifying sufferings of each member avail for the purification of others, so that the lack of one is made up for by the superabundance of another, and all are purified by the transcendently meritorious sufferings of Christ. It presupposes (1) that the Church is an organic whole, within which the sufferings of Christ are a perpetual source of holy influences, eradicating the remains of sin and stimulating to holiness those who are His members; (2) that these holy influences can be brought to bear upon individuals by those whose sufferings supplement Christ's (73), or as it is expressed,

Let those who are commissioned to dispense the mystic treasury beware . . . lest they who ought to be subject to the Keys do bring them into contempt. Clement VI. in Extrav. Com. Lib. V. Tit. IX. c. 2; Lynd. 23, 336.

(73). Math. XXV. 34, 35; Gal. VI. 2; 1 Cor. III. 8; XII. 13, 25, 26; Coloss. I. 24: I rejoice in my sufferings on your behalf, and fill up the outstanding remains (ὑστερήματα) in the sufferings of Christ in my flesh on behalf of His Body. Rom. V. 20 and XII. 5; Eph. IV. 3–6; Cyprian Ep. 29 (Oxf. 36), speaks of "the indulgence and privilege of the association" (*i.e.*, the benefit of being discharged from penance through association with the Church). *Id.* De Laps. 17: We believe that the merits of martyrs and the works of the righteous are of great avail with the Judge, but that will be seen when the day of judgment shall come. *Ibid.* c. 35: God can mercifully grant indulgence to him who truly repents. . . . He can set down to his account whatever the martyrs have asked, and the bishops have done for such persons. Ambros. A.D. 384, de Poenit. I. c. 15 (IV. 534): The whole Church takes upon itself the burden of the sinner, who must be sympathised with with weeping, and prayer, and affliction, and as it were sprinkles itself with his [impure] leaven, that in one who does penance, whatever is superfluous may be purged away by the help of the collective members by a certain admixture of manly mercy, as it were productive of fellow-suffering. Augustin in Ps. LXI. 4 (IV. 731 Migne): You suffer so much as by your sufferings must be contributed to the collective sufferings of Christ, Who suffered for us as our flesh, and suffers in His members, *i.e.*, in ourselves; for we each of us pay what we owe to this our commonwealth, and to the best of our power contribute thereto our measure of suffering, but the full equal sharing (pariatoria plenaria) of all sufferings will not be till the end of the world. Pseudo-Augustin ap. Gratian Caus. XXXIII. Qu. III. Dist. VI.

by the satisfactions of the saints; and (3) that this benefit can with certainty be communicated to living members of the Church, provided they obediently carry out the injunctions laid upon them, and can possibly be imparted to the dead by way of suffrage, but not with certainty (74).

15. It follows that for an indulgence to be effective five things are necessary, two on the part of those who grant or declare it, and three on the part of those to be benefited thereby. On the part of those who grant it, it is necessary (1) that they have authority to act for the Church; and (2) a good cause for acting or granting it. On the part of the recipient, (1) that he has true repentance, and is already in a state of grace (75); (2) that he has faith in the power of the keys, which involves virtual if not actual intention to obtain the indulgence; and (3) that he has obedience, which involves a strict fulfilment of the required conditions.

16. The power of granting indulgences, being an exercise of the power of the keys, belongs properly to the whole Church, and was formerly exercised by individual bishops with the tacit consent of the rest. Owing to the grave abuses which grew up in the early mediaeval period, the bishop's power of granting indulgences was, by the Fourth Lateran Council, limited to a period of forty days (76), or one-third of a

c. 1 § 1: We must believe that all the alms of the whole Church, and prayers, and works of justice and mercy succour one who recognises to his conversion his own [spiritual] death. Unless the unity of the Church succours him, unless it completes by its operation what is wanting to the sinner, the soul of one [spiritually] dead will not be rescued from the hand of the enemy. Alexander of Hales, Part IV. Qu. 23, Art. 2 and 3; Béringer, p. 21.

(74). Theodori Poenit. II. XIV. 2 in H. and S. III. 202: He who fasts for a dead man helps himself. Whether he helps the dead is known only to God.

(75). Lynd. 231: So long as the guilt remains, the penalty cannot be remitted.

(76). Concil. Lat. A.D. 1215, in Decret. Lib. V. Tit. XXXVIII. c. 14: When a Church is dedicated let not an indulgence extend beyond one year, whether it be dedicated by one or many bishops, and on the anniversary of the dedication let not the remission of enjoined penances exceed forty

year (77), except that a whole year might be indulged to such as contributed to build a church (78). Custom, nevertheless, continued to allow to the Pope the privilege of granting indulgences in fuller measure, whence arose in late mediaeval times an infamous traffic in them, which not only brought indulgences into disrepute, but discredited the whole doctrine of penance and the communion of saints. It is now, however, allowed by all (1) that no indulgence can avail unless it is granted for some sufficient and pious cause; (2) that the Church and not the individual must be the judge of the sufficiency; and (3) that an indulgence granted for any other reason is not only invalid, but also unlawful (79).

17. Indulgences as now granted are of several kinds. (1) Some are local, others real, others personal, which means that from certain places, things, or persons, stimulating influences may be received which so produce holiness that the otherwise necessary mortifications can be dispensed with. (2) Some are perpetual, others temporary. (3) Some are granted to the

days. Const. 9 Peckham, A.D. 1279: It is wholesomely ordained that prelates in granting indulgences do not exceed forty days. Boniface VIII. in Sext. Lib. v. Tit. x. c. 3; Const. Islep, A.D. 1359: By these presents we grant forty days' indulgence to all Christians in our province who shall pray in the manner aforesaid. Const. Bourchier A.D. 1454; Const. 7 Nevil, A.D. 1466.

(77). Theodori Poenit. I. II. 1 and 8 in H. and S. III. 178; I. VIII. 10 and 11, *Ibid.* p. 184.

(78). Dunstan, Can. 68, A.D. 963: Let him that hath riches rear churches to the praise of God, and endow them, and give them lands, and let inferior priests [*i.e.*, priests not attached to a collegiate church] be brought thither to officiate, . . . and let him repair the public roads with bridges over deep waters and foul ways. Alexander III., quoted above, note 71.

(79). Cyprian de Laps. c. 18: If any one thinks by an over hurried haste to give remission of the penalties of sin to all, or dares to rescind the Lord's precepts [which require penance], not only does he in no respect benefit the lapsed, but he does them harm. . . . The martyrs order something to be done, but only if this thing be just and lawful. c. 20: Martyrs cannot be the authority for the bishops doing anything against God's command, who themselves have done God's command. Liguori Lib. VI. n. 532, on Clement VI. in Extrav. Com. Lib. v. Ep. IX. c. 2.

living, others conceded by way of suffrage for the dead (80). (4) Some are plenary, others partial. Plenary indulgences were unknown before the eleventh century; in the thirteenth they were extremely rare (81); and although they may be a logical corollary from the communion of saints, their validity is still regarded with suspicion by many.

(80). Lynd. 237 observes that the Church's mystic treasury cannot be applied to the dead, because no indulgence avails unless good cause is shown. Pius VI. in the Bull Auctorem fidei, A.D. 1790, decreed that it might avail per modum suffragii. See Craisson, § 4503 and 4572, who defines an indulgence for the dead as a ransom offered admittedly sufficient, but the application of which in this or that degree to this or that person is not covenanted, though confidently expected in answer to the Church's prayer.

(81). The first plenary indulgence known to have been granted was that granted by Urban II. in Concil. Clement, Can. 3, A.D. 1095, in favour of Crusaders. Devoti Lib. II. Tit. III. § 4; Béringer, p. 45.

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AUTHOR OF

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*Ἐγώ εἰμι ἡ θύρα· δι' ἐμοῦ ἐάν τις εἰσέλθῃ, σωθήσεται· Ὁ φιλῶν τὴν ψυχὴν αὐτοῦ, ἀπολέσει αὐτήν· καὶ ὁ μισῶν τὴν ψυχὴν αὐτοῦ ἐν τῷ κόσμῳ τούτῳ, εἰς ζωὴν αἰώνιον φυλάξει αὐτήν.*—JOHN x. 9; xii. 25.

VOLUME II

## CHURCH DISCIPLINE

JOHN HODGES

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# PREFACE.

On the 20th day of June 1894 the most blessed Bishop of old Rome, Leo XIII., addressed an encyclical letter to the rulers and nations of the world, in which, "drawn," as he informs them, "to follow the example of our Redeemer and Master Jesus Christ, Who, when about to return to heaven, implored of God, His Father, in earnest prayer, that His disciples and followers should be of one mind and of one heart," and breathing the Spirit of his divine Master, he most earnestly invited them to unity.

He then laid it down that the true union between Christians "consists in [1] a unity of faith, and [2] a unity of government," adding further [3] that this union can no otherwise be brought about than by acknowledging "the primacy of the Roman pontiff," and appealed to the oldest traditions to verify this statement.

To this encyclical Anthimos, the Bishop of the most holy Apostolic and patriarchal throne of Constantinople, together with twelve other Orthodox Catholic bishops, made reply in the month of August 1895, by a patriarchal and synodic encyclical letter addressed to all the bishops and clergy, and all the religious and Orthodox community under their united charge, in which, after saying how great is their yearning for the reunion of the Churches, they make the following among other statements:—

"3. Agreeably, therefore, to this sacred desire, our Orthodox Church of Christ is always ready to receive any proposal for

reunion, provided only the Bishop of Rome once and for all shake off the chain of his many and divers 'privily brought in' [2 Pet. ii. 1] anti-evangelical innovations—the same which also provoked the sorrowful division of the Churches of East and West, and return to the ground of the holy Seven Ecumenical Councils, which, compacted as they were by the Holy Ghost of representatives of all the holy Churches of God, for the determination of the right doctrine of the faith against those affecting heresy, have universal and eternal validity in the Church of Christ."

The encyclical then proceeds to draw attention to the innovations referred to, in which the following passages are prominent:—

"7. The One Holy Catholic and Apostolic Church of the Seven Ecumenical Councils believed and taught, agreeably to the evangelic statements, that the Holy Ghost proceedeth from the Father; but in the West, from the ninth century onwards, the sacred Creed . . . began to be falsified, and the idea that the Holy Ghost proceedeth also from the Son to be wilfully propagated. Assuredly Pope Leo XIII. cannot be ignorant of the fact that his orthodox predecessor and namesake . . . Leo III., in 809, synodically disclaimed this anti-evangelical and wholly unlawful addition, 'and from the Son.'

"8. The One Holy Catholic and Apostolic Church of the Seven Ecumenical Councils baptized with three immersions in the water, and Pope Pelagius calls the trine immersion an ordinance of the Lord; and in the thirteenth century baptism by three immersions still prevailed in the West; . . . but in later times sprinkling and affusion were 'privily brought in.'

"10. The One Holy Catholic and Apostolic Church of the Seven Ecumenical Councils received that the precious gifts are hallowed after the prayer of the invocation of the Holy Ghost by the blessing of the priest, as the ancient rituals of Rome and the Gauls bear witness. Howbeit, afterwards the

Papal Church innovated in this by wilfully laying down that the hallowing of the precious gifts takes place along with the enunciation of the words of the Lord, 'Take, eat, this is My body,' and, 'Drink ye all of it, for this is My blood.'

"12. The One Holy Catholic and Apostolic Church of the Seven Ecumenical Councils, walking in the inspired teaching of Holy Scripture and the original Apostolic traditions, prays and invokes the mercy of God for the pardon and repose of those that have fallen asleep in the Lord (Heb. xi. 40; 2 Tim. i. 8; 2 Macc. xii. 44, 45). But the Papal Church, from the twelfth century onwards, invented and heaped together in the person of the Pope, as the possessor of privilege, a multitude of innovations touching a purgatorial fire, touching a superabundance of merits on the part of the saints, and the distribution of them to them that need, and the like.

"13. The One Holy Catholic and Apostolic Church of the Seven Ecumenical Councils teaches that the supernatural taking of human nature by the only begotten Son and Word of God, 'of the Holy Ghost and the Virgin Mary,' is alone pure and immaculate, but the Papal Church again innovated scarcely forty years ago by teaching a new-fangled doctrine of an immaculate conception of the Theotokos and ever-Virgin Mary—a doctrine unknown to the ancient Church.

"14. . . . When we revert to the Fathers, and the Ecumenical Councils of the Church of the first nine centuries, we reach the assurance that never was the Bishop of Rome regarded as the supreme authority and infallible head of the Church, and that every bishop is head and president of his own particular Church, subject only to the synodic constitutions and decisions of the Church at large, as alone infallible, the Bishop of Rome being in no wise excepted from this rule; . . . while the sole Eternal, Divine, and Immortal Head of the Church is our Lord Jesus Christ, for 'He is the head of the body the Church' (Col. i. 18)."

Comparing these two encyclicals, we might almost be disposed to say that the prospect of reunion is hopeless. But again the words of the venerable Pontiff of old Rome occur:—

"We are well aware . . . that there are those who consider that we are far too sanguine, and look for things that are rather to be wished for than expected. But we unhesitatingly place all our hope and confidence in the Saviour of mankind, Jesus Christ, well remembering what great things have been achieved in times past by the folly of the Cross and its preaching, to the astonishment and confusion of the 'wisdom of the world.'"

Surely, as we read these words, we cannot help feeling that they have about them the true ring of the Master's teaching, and that if all the bishops of Christendom were pervaded by the same spirit, that which now seems so unlikely, considering the obstacles to be cleared away, would promptly come to pass!

2. The writer has ventured to place extracts from these two encyclicals side by side, in order that it may be seen what are the principal points which at present keep asunder the two largest sections of the Christian world. Others, such as the use of unleavened bread, and the withholding the cup from the laity by the Roman Church, are, indeed, mentioned in the Eastern encyclical; but if it were clearly understood that they were merely points of discipline peculiar to the Roman Church, it is probable that they would not be found insuperable barriers to reunion.

At present, however, the fact has to be faced that the Western Church has, by its own authority, inserted the words, "and from the Son" in the Creed, which to the Easterns savours of heresy. Considering that the Roman Church is hardly likely to proclaim its fallibility by striking them out, and that we have it on the authority of Christ Himself that "when the Paraclete is come, whom I will send to you from

the Father, even the Spirit of truth, which proceedeth from the Father" (John xv. 26), is it permissible to hazard the opinion that the East might admit words such as, *and has been sent forth from the Father by the Son*, after the clause, "which proceedeth from the Father," provided they were inserted in the Creed by Ecumenical authority?

3. Such kindly criticism has been bestowed upon the previous volume of this work that the author feels diffident in making any remarks upon what some have suggested as possible amendments. One point, however, does deserve attention.

It is matter of common knowledge that a large number of Roman canonical writers, from the thirteenth century downwards, have stated that the essential form in consecrating the Eucharist is the repetition of Christ's words of institution. Still it is believed that no authority can be quoted from the first ten centuries in support of this view; and the unanimous opinion of the Easterns, alike in ancient and in modern times, is opposed to it. It is, moreover, believed to be a fact that the Liturgy of Addai and Mari, in its oldest form, before it was tampered with to bring it into accord with the prepossessions of modern Westerns, does not even contain the words of institution, and some of the ablest writers of the Roman Church, for instance Le Brun, reject the current view of the Roman canonists. Under such circumstances it seemed safer to express a view which has been always held by all, rather than a mediæval theory which owes its rise to Scholasticism, and with which those who are not versed in Scholasticism seem to desire to have nothing to do.

It has also been suggested that separate chapters might with advantage have been given to confirmation and annealing, instead of, as at present, the one being included in baptism, the other in penance. In itself this is a small thing. Without denying that such a course has advantages, if it is desired to accentuate the fact of there being seven sacraments, and

neither more nor fewer, yet the disadvantages seemed to the writer to outweigh the advantages. Early Christian writers who speak of baptism and its effects in such glowing terms understand thereby baptism as a whole, *i.e.*, the great liturgical rite, which included three sacraments in the Scholastic sense of the term—viz., the sacrament of exorcism, the sacrament of the washing, and the sacrament of the chrism or laying on of hands. To apply their elaborate language and the blessings they attach to baptism to the administration of one of these parts only to the exclusion of the two others, is surely to introduce confusion, and appears to have supplied the anvil upon which the modern heresy denying the sacramental efficacy of baptism is based.

And here, again, it should be remembered that the Eastern Church knows nothing of Scholasticism, and has never passed through this phase of thought. The West has; and although, as a system generally taught and received, Scholasticism has passed away, yet it has not done so without leaving many traces behind it. "O God, whose *property* is ever to have mercy" is a phrase which to a non-Scholastic mind has no meaning. The reduction of matter and form to certain irreducible *minima* are, again, conceptions which we owe to Scholasticism. The doctrine of intention as now taught is another Scholastic product. Accordingly, the great Roman Church, which in formulating the doctrine of the Immaculate Conception of the ever-Virgin Mary, has carried the application of logic to spiritual matters further than any other Church has dared to do, finds it necessary first to teach its future theologians the Scholastic philosophy, that into minds moulded by that teaching may be poured the Western theology built up on Scholasticism. It is suggested that this carrying of the Scholastic philosophy, with all that it practically involves, into the sphere of theology may have more to answer for than any other set of facts in estranging the East from the West. As

the triumph of logic, Scholasticism is no doubt a magnificent system; but who shall venture to assert that by applying the laws of the human mind in its present state of existence, to superphenomenal realities you can obtain a knowledge of eternal truth? Surely, to assert this is to make the human mind the measure of all things, and to reduce God, who is immeasurable, to the standard of human ideas and human conceptions! Out of itself, the human mind can only elaborate that which, like itself, is human. The true knowledge of God must therefore be a matter of revelation, not of logic. "Touching the Almighty, we cannot find Him out" (Job xxxvii. 23).

At the Norwich Church Congress, Mr. J. W. Birkbeck told a story as to how he was once nonplussed by a Kieff monk asking him, "Do you always use incense in your churches?" Upon his replying, "No, not always—only sometimes," the monk retorted, "Did I not tell you that yours is a Popish Church? For you know that it was the Papists who invented low masses, with no music or incense, and that just about the time when they were inventing their new clause, 'and from the Son,' for the Creed."

This story he told, not as an example of a serious hindrance to unity, nor yet of theological learning, but of the sort of misunderstanding which constantly arises in the East from discussing matters from totally different points of view. Have not quite as great misunderstandings occurred in the West from a similar cause?

4. In this, as in the previous volume, the author has endeavoured to confine the statements in the text strictly within the limits of the authorities cited or referred to in the notes. To have expanded these statements into what some would prefer to call whole truths, might to others have seemed to be corrupting them into untruths; and, at any rate, the expansions of modern text-writers carry with them no general authority. The authorities cited date from various times, and come from

different parts of the Church. It cannot, therefore, even be said that the laws they lay down are, or ever were at any one time, obligatory on the whole Church. Those who framed them did so for the benefit of the particular patriarchate or province over which they bore rule; and inasmuch as they presided over people of various races, and of varying moral and intellectual perceptions, rules which were wanted in one part of the Church might often not be wanted in another. Yet, as they all were acting under the Divine Spirit's guidance, and all acknowledged Christ as the only source of life, of holiness, and of truth, this threefold acknowledgment forms the underlying basis of all the canons they drew up.

If this fact is once fully realised, it will be seen that canon law is not, what it is so often treated as being, a branch of ordinary law having ecclesiastical authority, and the spiritual counterpart of the Roman civil law. This view of it grew up in ages when spiritual and temporal authority were united in the person of the Pontiff, and the spiritual was too often treated as a branch of the temporal. But the canon law of the whole Church is a great deal more than this. It is no less than the record of the Spirit's work, fulfilling itself in time by means of legislative enactments. Regarded thus, the study of canon law, instead of being a dry study of technical restrictions, pieced together by legal experts on the principles of the Roman law, will be found to be a study of the Spirit's work in the Church in times past, and of a manifestation of spiritual life, light, and truth, seeking to express itself in every age in the most perfect way. It is from this platform that the author has endeavoured to approach his subject. He will be well content should his endeavour stimulate others to work on similar lines, and thus, however remotely, contribute to the greater glory of God.

A LA RONDE, NEAR LYMPSTONE, DEVON,
*Feast of St. George*, 1896.

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# SHORT MANUALS OF CANON LAW.

## I.

## DISCIPLINE GENERALLY.

### The Nature and Object of Discipline.

1. The one object for which the Church exists upon earth is the glory of God through the salvation and sanctification of mankind. To attain this object it is necessary that those who are "dead in trespasses and sins" should have a new life infused and maintained in them, for which purpose the sacraments have been committed to the Church; but it is no less necessary that they should be restored to that unity among themselves which sin and its consequences have broken, so that as a united body of righteous men their light may shine before the world. To effect this restoration, discipline is requisite. The acceptance of the Christian faith (1) or right belief leads men to desire the sacraments. The effort to observe Christ's commandments or the practice of holiness (2) brings them to submit to discipline.

2. By discipline is understood the power of producing actions in accordance with the faith, and restraining departures from Christ's rule of truth or holiness by spiritual coercion or severity (3). Discipline may therefore be said to be the divinely appointed instrument whereby such as have been placed in the

(1). Acts xxiv. 24; Gal. i. 23; Jude 3, 20; Heb. xi. 6: *χωρὶς δὲ πίστεως ἀδύνατον εὐαρεστῆσαι.* Clem. Strom. v. 13: The Lord says, I am the Door of the sheep [1 John x. 1–3, 7]; men must then be saved by learning the truth in Christ.

(2). Heb. xii. 14: *χωρὶς ἁγιασμοῦ οὐδεὶς ὄψεται τὸν Κύριον.*

(3). Cavagnis iii. 83.

way of salvation are carried forward to perfection by enduring hardship (4), and such as have deviated from the precepts of the Gospel and the commandments of life are brought back to righteousness through repentance and satisfaction (5). The power of exercising or prescribing discipline was committed to the Church by Christ Himself, who received all judgment from the Father (6), and is ordinarily called the power of binding and loosing, or the power of the keys. It involves two things: (1) the key of judgment or interpretation, whereby the unchanging truth of Christ is explained in the varying terminology of

(4). Justin 1 Apol. 40; Hippolyt. x. 30: Whatever sufferings thou didst undergo while being a man, these He gave to thee because thou wast of mortal mould. . . . And provided thou obeyest His solemn injunctions, and becomest a faithful follower of Him that is good, thou shalt in the world to come resemble Him. Cyprian de Vest. Virg. c. 1: Discipline, the safeguard of hope, the bond of faith, the guide of the way of salvation, the stimulus and nourishment of good dispositions, the teacher of virtue, causes us to abide alway in Christ, and to live continually for God, and to attain to the heavenly promises and divine rewards. . . . The Holy Spirit says in the Psalms, Keep discipline, &c. [Kiss the Son, &c.. Ps. II. 12], but unto the ungodly saith God, Why dost thou preach My laws and takest My commandment to thy mouth, whereas thou hatest discipline? [Ps. L. 17]. And again, He that casteth away discipline is miserable [Wisd. III. 11], . . . for whom the Lord loveth He correcteth [Prov. III. 11]. Ep. 48 (Oxf. 52), 2: Neither can those remain in God's Church who have not maintained its divine and ecclesiastical discipline, either in the conversation of their life or the peace of their character. Ep. 61 (Oxf. 4): We do not depart from the traditions of the Gospel, but with constancy . . . maintain the discipline of the Church.

(5). Cyprian Ep. 7 (Oxf. 11), 7; 14 (Oxf. 20), 1; 22 (Oxf. 27); 24 (Oxf. 28), 2; 27 (Oxf. 34); 30 (Oxf. 2): Maintain the ever-guarded rule of discipline; 39 (Oxf. 43), 2; 51 (Oxf. 55), 3; 54 (Oxf. 59), 1 and 2: Ecclesiastical discipline is not to be forsaken, nor priestly censure to be relaxed because we are disturbed with reproaches.

(6). John v. 22, 27; Tertullian Scorpiac. c. 10: For though you think heaven still shut, remember that the Lord left here to Peter, and through him to the Church, the keys of it, which every one who has been here put to the question, and also made confession, will carry with him. Pacian, Ep. 1 ad Sempron.: If bishops have inherited from the apostles the power of washing and anointing with chrism, they have inherited also the power of binding and loosing.

different ages, races, and people, and the abiding law of holiness is applied to the varying circumstances of times and places, some things being pronounced allowed, other things forbidden (7); and (2) the key of coercion or restraint (8), whereby effect is given to what the key of judgment has locked or unlocked (9).

3. The power of the keys, *i.e.*, of interpretation and coercion, extends to the whole sphere of faith and morals, because Christ came not only to be the Life, but also the Truth, and the Way to the Father. When it is applied to persons, the private life of those living in the world, the community life of those pursuing the counsels of perfection, it is termed personal discipline, either ordinary personal discipline or religious discipline. When it is applied to things—the liturgical worship

(7). Among the Jews, if a rabbi were asked whether the law allowed such or such conduct, if he replied in the affirmative he was said to loose, otherwise, to bind. So one part of the Church's binding or loosing is to determine whether certain actions are allowed or not; in other words, to interpret. See *Order*, note 134.

(8). Augustin ap. Gratian Caus. XXIII. Qu. VI. c. 1.: Schismatics say, Whom did Christ compel? I answer, Paul. Let them see in this case Christ first compelling, then teaching; first striking, then comforting. It is, however, wonderful that he who was first brought to the Gospel by bodily suffering laboured therein more abundantly than all who were called by a word, and whom greater fear first brought to charity, in him perfect charity should have cast out fear. Why, then, should the Church not compel her lost sons to return, if those lost sons have compelled others to be lost? Yea, even those who were not compelled to go astray but only led astray, if by fear-inspiring but health-giving lives such are brought home to her bosom, does not pious mother Church receive them with kindness, having more joy over them than over such as never wandered away? Pelagius *Ibid.* 1 Dist. XVII. § 4; Devoti Lib. III. Tit. I.

(9). Augustin ap. Gratian Caus. XXXII. Qu. 1. c. 8: Without doubt remission of sins is given by the keys of the kingdom of heaven. Odo's Can. 2, A.D. 943: We admonish kings and princes to be obedient to their archbishops and bishops, because the keys of the kingdom of heaven are given to them. Gratian 1 Dist. XX. Pars. II. § 1: With the one key power was given to him [Peter] to discern between disease and disease, with the other power to cast out from or admit to the Church. Lynd. 266, 336, 352, 248.

of the Church, sacred places, seasons, and times—it is termed liturgical discipline. For the present we confine ourselves to personal discipline.

### Discipline—Remedial, Penal, and Vindictive.

4. It has been already seen that the object of the sacraments is to bring men into and to keep them in communion with God, through the ministrations of the Church, which is the Body of Christ. Similarly, the end of discipline is to keep those who are members of the Church in full corporate communion with each other, not only as righteous men, but as righteous men illuminating the world. Accordingly, personal discipline is of two kinds: (1) remedial, for the purpose of advancing personal holiness and bringing back wanderers to the fold; (2) penal, for the purpose of vindicating the Church's claim to holiness before the world, and securing public satisfaction for crimes and offences which obscure its light. The former is called censure or correction, the latter punishment or vengeance ([10]).

5. The aim of remedial discipline is primarily the soul's health and the reform of an offender, so that every member of Christ's body may be presented before God pure and spotless ([11]). In it, therefore, no more harshness should be employed for the purpose of correction than is really necessary ([12]);

(10). 2 Cor. x. 6. The term ultio is used by Hieronym. ap. Gratian I. Dist. xciii. c. 23; Leo *Ibid.* Caus. I. Qu. vii. c. 18; Gelasius, A.D. 494, *Ibid.* Caus. II. Qu. vii. c. 47; Gregory *Ibid.* c. 46; Const. 9 Edmund, A.D. 1236; Decret. Lib. III. Tit. xli. c. 10, and Tit. xliv. c. 1 and Lib. iv. Tit. iii. c. 3; Lynd. 247.

(11). Col. I. 28; Lynd. 129: Understand that proceedings are taken for the soul's health when the aim is not to inflict the canonical penalty according to the quality of the crime or offence, but only that the offender may be amended from his crime.

(12). Cyprian Ep. 64 (Oxf. 3), 3: We desire to overcome the wrongdoings of individuals by clemency and patience rather than to punish them by our priestly (*i.e.*, episcopal) power. *Id.* Ep. 11 (Oxf. 17), 2: In smaller sins which are not committed against God, penance may be performed in a set time. Gregory iv. ap. Gratian I. Dist. xlv. c. 4: Rulers

hence one great part of remedial discipline is warning or monition (13).

6. Penal discipline is exercised primarily for the good of others and to vindicate the holiness of the Church before the world, but it is also exercised secondarily for the good of the offender (14). Hence it may be employed without warning whenever the good of others requires it; but unless the good of others requires it, it should not be resorted to without threefold warning (15). The good of others is held to require it: (1) when crime is manifest and notorious (16); (2) when by a canon

of Churches must be dealt with patiently, and corrected rather than condemned forthwith.

(13). S. Matt. XVIII. 15–17 : Moreover, if thy brother shall trespass against thee, go and tell him his fault between him and thee alone; if he shall hear thee, thou hast gained thy brother. But if he will not hear thee, then take with thee one or two more, that in the mouth of two or three witnesses every word may be established. And if he shall neglect to hear them, tell it unto the Church. Ambros. ap. Gratian Caus. XXIII. Qu. IV. c. 26; Augustin *Ibid.* c. 24; Baedae Poenit. V. 7, A.D. 750, in H. & S. III. 331. Alexander III. to Archbishop of Canterbury in Decret. Lib. III. Tit. II. c. 4: We enjoin you carefully to warn clergy. . . . If within forty days they refuse to comply, suspend them till they come to satisfaction. Concil. Ebor. A.D. 1195, Can. 19; Concil. Westminster A.D. 1200, Can. 7: That prelates do not excommunicate their subjects without canonical warning. Concil. Lat. IV. A.D. 1215, Can. 47 in Decret. Lib. V. Tit. XXXIX. c. 48; Honorius III. *Ibid.* Lib. III. Tit. 1. c. 16, and Lib. V. Tit. XXXIX. c. 48, and Tit. 1. c. 2; Lynd. 69. 120, 206, 240 says that the archbishop cannot proceed to punish in a case when he cannot monish unless monition has been given by some one else.

(14). So Augustin ap. Gratian Caus. XXIV. Qu. III. c. 17, says that even the anathema may, if God so will, turn to, and prove to be most healthy correction. *Ibid.* Qu. IV. c. 51.

(15). Gregory ap. Gratian I. Dist. LXXXVI. c. 24, and Gregory VII. *Ibid.* I. Dist. XCVI. c. 10, allowed it to be good in certain cases without warning, but Alexander III. in Decret. Lib. II. Tit. XXVIII. c. 26, held otherwise. Concil. Lat. IV. A.D. 1215, Can. 47, *Ibid.* Lib. V. Tit. XXXIX. c. 48; Const. 26 Langton, A.D. 1222; Concil. Lugdun. A.D. 1245, in Sext. Lib. V. Tit. XL. c. 3, says that an excommunication without previous warning does not hold good. Concil. Lugdun. II. A.D. 1274, *Ibid.* c. 9.

(16). Const. 26 Langton, A.D. 1222: We decree that sentence be pronounced against none without canonical warning, unless when the excess is manifest. See *Spiritual Judicatures*, note 122 to § 7.

of the Church a particular crime is directed to be punished without warning (17); (3) when it is an open act of contempt of the judge (18); and (4) when it is an offence for which an *ipso facto* or *ipso jure* sentence has been already prescribed, and is not merely directed to be prescribed (19). The means of coercion used to enforce discipline either penal or remedial which are purely spiritual are termed severity (20) or austerity (21); those which are temporal, or which involve temporal consequences, animadversion (22). Animadversion, when administered solely by way of warning to others and regardless of the welfare of the offender, is called vindictive punishment.

7. In the early days of the Church, when the holiness of the body before the world was accounted of primary importance, penal discipline played a more important part than it has done since (23). Yet even then no uniform method of severity

(17). Concil. Lat. IV. A.D. 1215, Can. 8 in Decret. Lib. v. Tit. 1. c. 24; Const. 18 Otho, A.D. 1237; Const. 5 Peckham, A.D. 1279: Our will is that the rehearsal [of Const. 18 Otho] be looked upon as a monition. Const. 21 Peckham, A.D. 1281: We ordain that without any admonition they fall under the punishments aforesaid.

(18). Decret. Lib. II. Tit. XXVI. c. 16, and Lib. III. Tit. XXXIX. c. 25; Lynd. 349.

(19). Gregory ap. Gratian Caus. v. Qu. 1. c. 2, pronounced a general sentence of excommunication on an unknown person. Concil. Westminster A.D. 1200, Can. 7; Const. 1 Langton, A.D. 1222.

(20). Cyprian Ep. 29 (Oxf. 36), 1; Ep. 30, 2; Ep. 54 (Oxf. 59), 1; Augustin ap. Gratian I. Dist. XLIV. c. 1: Severity must be exercised towards the sins of few. Syn. Rom. A.D. 680, Can. 3; Concil. Cabilon. II. A.D. 813, *Ibid.* Caus. XVI. Qu. VII. c. 28; Ayliffe 157, says that censure is confined to excommunication, suspension, and interdict, whereas severity includes every other form of ecclesiastical punishment. Decret. Lib. v. Tit. XL. c. 20.

(21). Leo *Ibid.* I. Dist. LXXXVI. c. 1, calls it *austerior disciplina;* Hieronym. *Ibid.* I. Dist. XLV. c. 16, *austeritas.*

(22). Nicolaus, A.D. 864, ap. Gratian Caus. VI. Qu. III. c. 3, mentions together correction and animadversion. Decret. Lib. v. Tit. XXXVII. c. 12; Const. 19 Othobon, A.D. 1268; Lynd. 322; Ayliffe 157.

(23). Thus, in Acts v., Ananias and Sapphira were not merely excommunicated but were struck dead. In 1 Tim. I. 20, St. Paul says that he has delivered Hymenæus and Alexander over to Satan, that they may learn not to speak slanderously (βλασφημεῖν). Conf. 2 Tim. IV. 15. In 1

existed for the treatment of those guilty of the greater crimes, such as idolatry, murder, adultery (24). A second baptism being impossible (25), such offenders were in some places excluded from the Church altogether, and without hope of return (26); in others they were allowed to be readmitted, after a long period of penance, by the imposition of hands (27); in others only at the hour of death (28). In the Roman Church, at least since the beginning of the third century, they were treated with considerable leniency (29).

8. After the great schism of Novatus in the middle of the third century, the question of the treatment of offenders continued to be a vexed one until it was settled by the Nicene

Cor. v. 3–5, St. Paul, spiritually present with the Corinthians, in consistory delivers the incestuous man to Satan for the destruction of the flesh (*εἰς ὄλεθρον τῆς σαρκὸς*). In 1 Cor. iv. 21 he threatens to come with a rod, and (2 Cor. xiii. 2) declares that he will not spare, but (2 Cor. x. 6) will punish every kind of disobedience.

(24). Cyprian Ep. 51 (Oxf. 55), 21 : Subject to maintaining the bond of concord, every bishop disposes and directs his own acts.

(25). Heb. vi. 4. See *Penance*, note 13.

(26). Concil. Elib. A.D. 305, Can. 1, 6, 7 : Let them not even at the close receive Communion. Concil. Sardic. A.D. 341, Can. 1, forbids the viaticum to be given to simoniacal bishops. Concil. Valentin. A.D. 374, Can. 3.

(27). Euseb. vi. 43 quotes the rule : That Novatus and those who adopt his uncharitable and inhuman opinion be alienated from the Church, but that brethren who have incurred any calamity should be treated and healed with the remedies of repentance. Ambros. ap. Gratian Caus. xxxiii. Qu. iii. Dist. 1. c. 50 : No one can do penance profitably unless he hopes for indulgence. But they say that Communion ought not to be restored to the lapsed. . . . Yet God has excepted no crime, who has forgiven all sins. Cyprian *Ibid.* c. 57 ; Isidor. *Ibid.* i. Dist. 1. c. 28.

(28). Cyprian Ep. 52 (Oxf. 56), 2 : It was decided in the council that penitents in peril of sickness should be assisted [with the viaticum]. Concil. Nic. A.D. 325, Can. 13 : Respecting the dying, let the old canonical rule be observed, so that if any one is at the point of death he be not deprived of the last and most necessary viaticum. Theodori Poenit. i. viii. 5 and i. ix. 7, following Julius ap. Gratian Caus. xxvi. Qu. vi. c. 12, declares a priest guilty of souls who refuses penance to the dying. Devoti Inst. Lib. ii. Tit. ii. § 87.

(29). Tertullian de Pudic. c. 1, A.D. 202, complains of Zephyrinus allowing restoration after adultery.

rule ([30]), which provided that any one guilty of denying the faith (which was the greatest crime of all) should be excluded from participating in the offering of the Church for a period of twelve years, during which he should pass through a course of regular discipline, and at its close be replaced in his original position if found deserving. When the sin was private and known only through the offender's confession, or if otherwise the bishop thought fit, the time might be abbreviated ([31]).

9. In the Western Church custom or law had, before the sixth century, (1) habitually fixed the period of exclusion from offering at seven years, unless special circumstances aggravated the offence and called for a longer period ([32]), and (2) had regularly indulged the offender by admitting him to Communion before his time of exclusion from offering had expired ([33]). It then further (3) allowed the severer bodily penances, even for manifest crimes, to be commuted into pilgrimages, almsgiving, and other works of mercy; and (4) finally, in conformity with Roman law, practically protected offenders from penal consequences by making the accuser

(30). Can. 11 : As to those who have transgressed without necessity, or without loss of estate, or without danger, or the like, . . . the Synod has decreed : . . . As many of them as do sincerely repent shall pass three years among the hearers ; for seven years they shall be kneelers, and for two years they shall share with the people [of God] in prayer without [participating in] the offering. Concil. Aurel. II. A.D. 533, Can. 20.

(31). Concil. Nic. A.D. 325, Can. 12 ; Rabanus, A.D. 829, ap. Gratian I. Dist. l. c. 34 : Those who are taken or convicted publicly of perjury [similarly, Cap. 26 Theodulf, A.D. 877, ap. Gratian Caus. XXII. Qu. l. c. 17], theft, fornication, and such like crimes, ought, according to the ancient canons, to forfeit their place ; . . . but those who make confession of such sins secretly committed by them before God's eye, in the presence of His priest . . . to these the hope of pardon may be promised by the mercy of God . . . if by fasting and almsgiving and watching and prayer they seek to make amends.

(32). Isidor. ap. Gratian Caus. XXXIII. Qu. II. c. 11 : The rule of the canons which orders the restitution of a penitent to his former state after seven years . . . the ancient fathers did not frame after their own fancy, but according to a ruling of divine judgment. *Ibid.* Qu. III. Dist. VII. and Caus. XXII. Qu. l. c. 17. and I. Dist. l. c. 28.

(33). See *The Eucharist*, note 254.

liable to the penalty himself if he failed to substantiate his accusation. The effect of these provisions was to abolish vindictive discipline almost entirely as an ecclesiastical institution, leaving the infliction of ordinary pains and penalties to civil tribunals. Such discipline as is now and has long been enforced in spiritual courts—except in countries where the spiritual authorities have themselves the temporal government also—is only quasi-penal, and not vindictive, *i.e.*, even when imposed in the public interest, as in the case of contumacious heretics and criminal clergy, it is declared to be administered for the soul's health, and its rigour is mitigated accordingly.

### Varieties of Discipline.

10. There are several ways in which discipline, whether penal or remedial, may be exercised, but all of them may be distinguished as being either public or private ([34]). When it is exercised publicly in the face of the Church, it is said to be discipline of the outer tribunal or the contentious forum; when privately, to be discipline of the inner tribunal or non-contentious forum. Of public discipline, again, there are two kinds ([35]): (1) that which is exercised openly for the good of

(34). Hieronym. ap. Gratian Caus. xi. Qu. iii. c. 21: In two ways a man may be delivered to Satan, viz., (1) publicly, when the offence is manifest to the Church; (2) privately, when it is not so manifest. Concil. Camaracen. Tit. xiv. c. 1 ap. Labbé Tom. xx. 1411: A two-fold ecclesiastical forum has been established by Christ by the name of the Keys: one of the sacrament of penance, which regards the conscience, in which the guilty one is not bound or loosed except upon his own confession; the other of jurisdiction and external government, in which the guilty one is convicted and judged, not only on his own confession but by witnesses. Morinus de Poenit. Adm. Lib. vii. c. 1. sec. 1 considers two tribunals distinguished about the year 700 A.D. Van Espen considers both tribunals were identical up to the twelfth century. Du Pin derives the outer tribunal from the prince's authority. Lynd. 127, 129, 135, 164, 327, 337: He who confesses is condemned in foro contentioso, but absolved in foro poenitentiae.

(35). Lynd. 339: Penance is called public in a double sense. In one sense that is called public which is solemn, and in this sense a clerk may not do public penance (Gratian 1 Dist. l. c. 65). In another sense that is

the Church, leaving it to work its own effect on the individual, which is called simply public discipline or the hoe of ecclesiastical discipline (36); (2) that which is exercised openly for the good of the offender when the public prayers of the Church on his behalf are combined with it. The latter is called solemn discipline. Again, discipline of the inner tribunal is sometimes received non-sacramentally, in the court of the soul, after confession to God only, by a humble submission to the visitations wherewith He afflicts in this life; at other times sacramentally, in the court of penance (37). We have, therefore, to distinguish four distinct varieties of discipline, viz., (1) non-sacramental, in the court of the soul; (2) sacramental, in the court of penance; (3) public, for the good of the Church; and (4) solemn, for the good of the individual as well.

11. The private fulfilment of a Christian man's duties and his unseen shortcomings in his efforts to live a Christian life, are matters which do not directly fall within the cognisance of the Christian community unless attention is drawn to them by the individual's own confession (38). They do, however, in-

called public which is done publicly, and such penance a clerk can do (Gratian 1 Dist. XXVIII. c. 9). Gregory *Ibid.* Caus. XXXIII. Qu. III. Dist. VI. c. 2, and Decret. Lib. v. Tit. XXXVIII. c. 7.

(36). Const. Mepham A.D. 1328: It concerns prelates . . . to root out by the sword of the Spirit and the hoe of ecclesiastical discipline all hurtful vices.

(37). The Franciscan Elbel Theol. Decal. Pars. v. p. 253 divides as above; also Ferraris Bibl. *verb.* Forum; but the latter says the forum internum, or forum conscientiae, consists of two divisions—one sacramental, the other non-sacramental. Lynd. 339 says there are three kinds of penance, (1) solemn, (2) public, (3) private; but, p. 327: There are three kinds of confession, (1) in the court of the soul before God, (2) in the court of penance before His representative, (3) before a judge in the contentious court. In the first kind of confession a hidden sin is not exposed, because it is already known to God; in the last a sin is not exposed with a view to pardon; in the intermediate kind a sin is exposed, and with a view to pardon. *Ibid.* 236.

(38). Col. III. 3: Your life is hid with Christ in God. Innocent III. in Decret. Lib. v. Tit. III. c. 33: The Church does not sit in [public] judgment on secret things. Const. 9 Peckham A.D. 1281; Lynd. 187, 203, 236, 327.

directly fall within its cognisance, because whatever lowers the holiness of one member lowers the holiness of the whole body. Hence the Church is careful to point out that, when mortal sin has been committed, its ill effects are not ordinarily got rid of without spiritual assistance and penitential hardship ([39]). Still, wherever there is true repentance, there is undoubtedly God's forgiveness on confession being made to Him only in the court of the soul ([40]), and the effects of sin may be purged by cheerful submission to divine chastisement ([41]).

12. For those who require spiritual assistance the tribunal of penance is provided by the Church, in which God's mercy is obtained for the offender by the prayers of others, and the remedial discipline necessary to undo the effects of sin is indicated by the confessor. An ordinary confessor has, however, only a commission from the Church to reconcile privately, and that within the limits of his commission, after a course of private discipline, but at the hour of death he may reconcile one who is undergoing public or solemn discipline ([42]).

(39). Origen Hom. II. c. 6 in Psalm XXXVII. (II. 688): They who have sinned, if indeed they conceal and keep the sin close, are urged internally. . . . Only carefully look out for the person to whom you ought to confess your sin. Augustin Serm. 392: Let no one say, I do penance in secret before God. It is enough that God, who will pardon me, knows that I repent in secret. Then it were said in vain, What things ye shall loose upon earth shall be loosed in heaven. Dunstan Can. 56, A.D. 963: The necessary assistance of a man of God is very effectual for the cure of sin in penance, even as the recovery of a sick man is on a good physician. See *Penance*, note 23.

(40). See *Penance*, § 15.

(41). Heb. XII. 6; Ps. XCIV. 12; 1 Cor. XI. 32. See *Penance*, § 19.

(42). Concil. Nic. A.D. 325, Can. 13 ap. Gratian Caus. XXVI. Qu. VI. c. 9; Concil. Carthag. II. Can. 4, A.D. 390, *Ibid.* c. 5: If any one is in danger and desires to be reconciled to the divine altars, if the bishop is absent let the presbyter forthwith consult him, and by his command reconcile the penitent in danger. Leo *Ibid.* c. 10; Coelestin *Ibid.* c. 13; Concil. Brac. II. A.D. 572, *Ibid.* c. 5; Theodori Poenit. I. VIII. 5 in H. & S. III. 184; Concil. Ebor. A.D. 1195, Can. 17; Const. 16 Edmund, A.D. 1236: At the hour of death absolution is to be denied to none but upon a condition that they present themselves to the apostolic presence if they recover. Const. 26 Othobon, A.D. 1268; Const. 17 Peckham, A.D. 1281:

13. When offences are manifest (43), so that scandal (44) arises from them and the light of the Church in the world is thereby obscured, the necessity arises for the exercise of the discipline of the outer tribunal. Yet since the publicity of the outer tribunal under the existing circumstances of the Church leads to serious social and civil consequences, whereas the Church is before all things the kingdom of righteousness, justice, and mercy, the exercise of public discipline is hemmed in by strict rules of procedure (45). In the outer tribunal offences, if denied, are required to be established by evidence in a regular way (46), whereas in the inner tribunal the offender's

At the point of death any priest may absolve them upon condition that, if they recover, they do within three months make confession to their proper bishop.

(43). Concil. Carthag. II. Can. 3, A.D. 390, ap. Gratian Caus. XXVI. Qu. VI. c. 1; Concil. Carthag. III. Can. 32, A.D. 397, *Ibid.* c. 14: Whatever penitent's crime is public and notorious, so that it disturbs the whole Church, let the [bishop's] hand be laid on him before the apse. Augustin *Ibid.* Caus. XXIII. Qu. IV. c. 19; Calixtus II. A.D. 1139, in Decret. Lib. V. Tit. XXXVIII. c. 1: Manifest crimes may not be purged by secret correction. *Ibid.* Tit. IX. c. 11, and Tit. IX. c. 2, and Tit. XVIII. c. 5; Lynd. 336.

(44). Lynd. 112 defines scandal as "dictum vel factum minus rectum vel signum cujus occasione aliquis trahitur ad consensum alicujus peccati et praebet alicui occasionem offensionis vel ruinae."

(45). Evaristus ap. Gratian Caus. XXX. Qu. V. c. 10: We ought to condemn no one without a true and rigorous proof. For the apostle saith: Who art thou, O man, that judgest another? To his own Master he standeth or falleth. Let not, therefore, hearsay crimes move any one, nor let any one ever believe current rumours without certain proof; but let him first diligently inquire into what he hears, lest he do anything precipitately. Lynd. 233: If a presbyter knows of the sin of another, and that is a hidden sin, and he is applied to in private [to give the communion], he ought to refuse it. But if [the offender] publicly comes for it, he ought to give it for three reasons: (1) because he who inflicts a public punishment for a private sin is a revealer of confession or a betrayer of crime; (2) because every Christian has a right to receive the Eucharist, unless he is in mortal sin; (3) because the Spirit bloweth where it listeth; and (4) because it would cause scandal to refuse it.

(46). Augustin *Ibid.* Caus. II. Qu. II. c. 1: We cannot give sentence against any one unless he is either convicted or spontaneously confesses. *Ibid.* Caus. XV. Qu. V. c. 1: If he has either spontaneously confessed or

uncorroborated statements are proof, and he is at once accuser and accused ([47]). The outer tribunal, moreover, as being the tribunal of Christ's visible kingdom upon earth, requires to be presided over by the bishop or one deputed to represent him, such as an archdeacon or spiritual judge ([48]). The inner tribunal, being the tribunal of the Church as an intercessory body with heaven, requires one to preside over it who has the capacity of effectually interceding for the offender, a presbyter or bishop ([49]).

14. Ordinary public discipline, which is administered by the bishop ([50]) or a spiritual judge in the interests of the people, is

been proved guilty by lawful witnesses, let him be visited with canonical sentence. Gregory *Ibid.* I. Dist. LXXIV. c. 2: No innocent man should be unjustly deprived of the ministry of his order.

(47). Const. 1 Peckham, A.D. 1281: We lay the stress of the proof upon the oath of him that is to receive the sacrament, who is to take care of what concerns his salvation. Lynd. 233: The mere assertion must be believed of him who says he has confessed; 332.

(48). Leo Epist. 108 (al. 83): The Mediator between God and man, Christ Jesus, hath given this power to the presidents of His Church, that they should both impose penance on those who confess, and should admit the same, when purified by wholesome satisfaction, through the gate of reconciliation to the communion of the sacraments. Theodori Poenit. I. IV. 5 in H. & S. III. 180: If one kill a clerk, he is in the bishop's judgment. Concil. Chelsea A.D. 787, Can. 3; Athelstan's Law 7, A D. 925: Let him who swears a false oath never be thought worthy . . . to lie in consecrated ground, unless he have the bishop's testimony . . . that he hath made satisfaction. Cnut's Law 25, A.D. 1018: Till he desist and make deep satisfaction, as the bishop enjoins. Concil. Ebor. A.D. 1195, Can. 7: If they repent of their perjury, let them be sent to the archbishop or bishop, or the general confessor of the diocese. Concil. Winton A.D. 1071, Can. 11: That only bishops give sentence for gross crimes. Const. 4 Thorsby, A.D. 1363, enumerates thirty-seven gross crimes reserved for the bishop's judgment. Lynd. 340.

(49). Ordinary presbyters have no jurisdiction of the outer tribunal, and only jurisdiction of the inner tribunal excepting the reserved cases. See *Duties of Order*, § 20, and *Penance*, § 5. Conf. Gratian Caus. XXVI. Qu. VI. c. 4; Caus. XV. Qu. V. c. 2. Nevertheless, Const. 35 Edmund, A.D. 1236, authorised parish priests [*i.e.*, not parochial incumbents, but their coadjutors] to censure the detainers of tithes.

(50). Concil. Clovesho, A.D. 787, Can. 3: Let the bishop separate the

confined to crimes which are open and manifest, or else to those which have become manifest by being judicially established before a contentious tribunal (51). Offences which are believed only to exist are directed to be tolerantly borne with until they are clearly brought home (52). Of sins of thought or intention

incestuous, coerce soothsayers, fortune-tellers, enchanters, diviners, wizards, and such as are guilty of sacrilege, and suppress all vices.

(51). Origen Hom. 21 in Lib. Jesu Nave c. I. (II. 447) : Unless sin is evident, we may cast no one out of the Church, lest in rooting up tares we should root up wheat also. Innocent, A.D. 405, ap. Gratian Caus. XXXII. Qu. V. c. 23 : Non habent latentia crimina vindictam. Julian *Ibid.* Caus. XXIV. Qu. III. c. 18 : The crimes of all which have become generally manifest, the guilty parties refusing to admit them . . . must be burnt out and cured. Urban II. *Ibid.* I. Dist. XXXII. c. 11 : We speak of things which are manifest. Secret things God knows and judges. Decret. Lib. V. Tit. I. c. 17 directs inquisitors to disclose all except hidden crimes. Lucius III. in Decret. Lib. III. Tit. II. c. 7 : Notorious crime is one thing, secret crime another. Notorious is said to be that for which a presbyter is canonically condemned, secret that which is tolerated by the Church. Lynd. 56 ; Morin de Poenit. V. 8 ; Devoti Lib. II. Tit. II. § 72.

(52). Ambros. ap. Gratian Caus. II. Qu. I. c. 17 : Christ did not eject Judas, although He knew he was a thief. *Id. Ibid.* c. 31 : If any one has not power to cast forth one whom he knows to be guilty, or is not able to prove him guilty, he is without blame ; for no judge may condemn without an accuser. Augustin Ep. 137, *Ibid.* c. 12 : Therefore I have not ventured to suppress or remove the name of that presbyter from the number of his colleagues, lest I should seem to affront the divine power under whose examination the matter now rests, if I anticipated divine judgment by my own. *Id.* de Poenit. c. 3, *Ibid.* Caus. XI. Qu. III. c. 75 : Although many things may be true, yet no judge dare believe them unless they are established by certain proofs. *Id. Ibid.* Caus. XXIII. Qu. IV. c. 1 : The evil must be tolerated for the sake of peace, nor must there be any corporal separation from them. *Id. Ibid.* c. 2 : Do ye who are good tolerate the bad, for Christ tolerated Judas. Concil. Afric. *Ibid.* Caus. VI. Qu. II. c. 3 ; Gregory *Ibid.* Caus. II. Qu. I. c. 15 :. Whoever does not tolerate the bad is a witness against himself by his own intolerance that he is not good. *Id. Ibid.* c. 74 : It were indeed grave and unbecoming to pronounce a certain sentence in a doubtful case. *Id. Ibid.* I. Dist. LXXIV. c. 2 ; Nicolaus *Ibid.* Caus. XV. Qu. V. c. 2 : Let no bishop or priest excommunicate any one until the cause is proven. Eugenius in Decret. Lib. I. Tit. XXXI. c. 2 : If a priest knows for certain that any one is guilty of a crime, or if he has confessed and refuses to amend, yet he ought not to charge him by name

which have never ripened into action (53) the outer tribunal takes no account, except in the case of heresy (54) and simony (55); but on the other hand, whenever a wrong act has been done it presumes that it was done with a wrong intention until the contrary appears (56). In public discipline, moreover, a person is held responsible for all the consequences of a wrongful act (57), whereas in the court of penance he is not

unless he can prove it judicially. . . . But he ought to admonish him not to put himself forward to communicate, because Christ did not repel Judas from communion. Lynd. 233 gives four reasons, quoted note 45, also *ibid.* 311.

(53). Public discipline does not deal (1) with sins of thought, Gratian Caus. XXXIII. Qu. III. Dist. I. c. 14; (2) with that which cannot be proved; (3) with what is not grave; (4) with what is not completed—a man cannot be charged with murder who has only wounded another; (5) with acts for which he is not responsible. Rule 22 in Sext. Lib. v. Tit. XII. c. 5: Non debet aliquis alterius odio praegravari. Lynd. 347: A sin does not merit accusation and punishment except when it has passed into an outward act.

(54). Const. 3 Arundel, A.D. 1408: Let no person touch or observe any sort of heresy. . . . Let him incur the sentence of excommunication *ipso facto* who knowingly and pertinaciously attempts the contrary after the publication of these presents.

(55). See *Excesses.*

(56). Lynd. 263: Either a thing is injurious on the face of it or it is indifferent. (1) If it is bad on the face of it, it is so either (*a*) of itself, as beating or slandering, which is presumed to be done with a bad intention unless the contrary appears; or (*b*) because of some aggravating circumstance, as if a man, knowing that he was about to be served with a process, caused the server to be arrested on a fictitious charge; or (*c*) it is done *ex officio judicis*, in which case the presumption lies in favour of the judge. (2) If it is indifferent, then by the rule of law the best construction must be put upon it. Lynd. 345: Malice is presumed unless a just cause is shown.

(57). Decret. Lib. v. Tit. XXXVI. c. 5: If a fire spread to stacks of grain or corn, . . . the man who kindled the fire shall recompense the damage. Gregory IX. *Ibid.* c. 9: If hurt is done or injury inflicted by your fault, or you have assisted others in inflicting it, or it has resulted from your want of skill and negligence, it behoves you to make satisfaction, nor is ignorance an excuse. Lynd. 347 says that a man is responsible for the consequences of his actions, even though these consequences were not what he intended. Lynd. 250: Negligence is a great sin.

held answerable for unpremeditated results (58). Again, as the rule of charity requires Christians to be slow to believe the report of other men's sins (59), so the rule of the Church requires the strictest interpretation to be put on penal canons (60).

## Solemn Discipline.

15. Solemn discipline is discipline which is publicly imposed by the bishop, with the common assent and concurrence of the clergy and people, or, as it is said, *in medio* (61), and is solemnly undergone, whilst public prayers are continually being offered on behalf of the offender. It involves the humiliation of public exposure as a penitent (62), and carries with it the benefit of the united intercessions of the faithful. The first step towards obtaining this benefit is the request for admission to the ranks

(58). Lynd. 248 observes that, although *in foro contentioso* a man committing perjury is guilty of all the evils which result therefrom, yet in the court of the soul penance is only imposed for the false witness, although it were aggravated by the results following.

(59). Gregory ap. Gratian I. Dist. LXXXVI. c. 23 and 1; Pseudo-Isidor. *Ibid.* Caus. XXX. Qu. v. c. 6: Let hearsay of evil move no one, nor let any one believe what is currently stated without certain proof; but first let him diligently inquire into what he has heard, lest he should act precipitately. Lynd. 16, 27, 78, 93.

(60). Leo, A.D. 446, ap. Gratian I. Dist. XLV. c. 6; Caus. XXXIII. Qu. III. Dist. 1. c. 18: Poenae legum interpretatione molliendae sunt potius quam exasperandae. Rule 49 in Sext. Lib. v. Tit. XII. c. 5: In poenis benignior est interpretatio facienda. Lynd. 15, 27, 78, 52, 127, 144, 151, 155, 171, 219, 240, 296.

(61). St. Paul, in 1 Cor. v., did not himself alone condemn the incestuous Corinthian, but συναχθέντων ὑμῶν καὶ τοῦ ἐμοῦ πνεύματος, so that his action was *in medio*. Cyprian Ep. 25 (Oxf. 31), 6: A great crime must be treated cautiously, with the advice of all the bishops, presbyters, deacons, confessors, and also the laymen who stand [at prayers]. Ep. 30 (Oxf. 33), 5: It is fitting that, an assembly for counsel being gathered together, with bishops, presbyters, deacons, confessors, as well as with the laity who stand [at prayers], we should deal with the case of the lapsed. Ep. 13 (Oxf. 19); Ep. 54 (Oxf. 59), 15: Scarcely do I persuade the people; nay, I extort it from them that they should suffer them to be admitted.

(62). Tertullian de Poenit. c. 9.

of penitents (63). In early times admission was not given without difficulty, and sometimes the applicant was given to understand that he must continue a penitent for life (64). Applicants for penance were called *Weepers*, because outside the Church-porch, clad in sackcloth and with ashes on their heads, they besought both clergy and people with tears to intercede with God and the bishop on their behalf (65).

16. It is a moot point whether there existed in the first ages of the Church any other form of discipline besides solemn discipline (66). One thing is, however, clear, that whatever may have been the case with regard to lesser offences of a private character, all the greater offences were originally dealt with by a course of solemn discipline (67). The offender was first

(63). Roman clergy to Cyprian, Ep. 30, 6: Let them knock at the doors, but not break them down; let them present themselves at the threshold of the Church, but not leap over it; let them watch at the gates of the heavenly camp, but let them be armed with modesty. Cyprian de Laps. 35: Think you that He will easily have mercy whom you have declared not to be your God? . . . Lying stretched on the ground, ye must cling close to the ashes, be surrounded with sackcloth and filth; after losing the raiment of Christ you must be willing to have no clothing; after the devil's meat you must prefer fasting. Ambros. de Poenit. Lib. I. c. 16; Devoti Lib. II. Tit. II. § 74; Euseb. v. 28 says that Natalius, A.D. 200, putting on sackcloth and covered with ashes, rolled at the feet of both clergy and laity. Concil. Agath. A.D. 506, Can. 15: When penitents ask for penance, let them receive the imposition of hands.

(64). Duchêsne, Origines du Culte Chrétien, p. 420. Concil. Elib. A.D. 305, Can. 3, prescribes this penalty for having after baptism acted as a heathen priest; Can. 13, for a brother marrying two sisters. Concil. Aurel. III. A.D. 538, Can. 25.

(65). Tertullian de Poenit. c. 9: Penitence requires the offender to lie in sackcloth and ashes, to cover his body in mourning . . . to roll before the feet of the presbyters . . . to enjoin on all the brethren to bear his deprecatory supplication before God.

(66). Martène de Ant. Eccles. Rit. Lib. I. c. 6, art. 3; Devoti Lib. II. Tit. II. § 73; Morinus de Poenit. Lib. IV. c. 1, no. 3; Bona Rer. Lit. Lib. I. c. 17, § 3; Craisson, § 3847; Cyprian Ep. 9, 2: In smaller sins offenders do penance for a set time, and, according to the rules of discipline, come to public confession, and by imposition of the hand of the bishop and clergy receive the right of communion.

(67). Iren. Haer. II. 13, 5, relates that women who had been defiled pub-

excluded from Church-fellowship, *i.e.*, from the offering, from Communion, and from participation in the prayers. In this country this was called suspension from entrance to the Church ([68]). Then, when his weeping or application for penance had been successful, he was admitted by the imposition of the bishop's hands ([69]), but not without probation at each successive step, to the several privileges from which his sin had excluded him.

17. In the East very generally but not universally there were, besides the weepers, or those suspended from entrance to the Church, three classes of penitents, called respectively *Hearers*, *Kneelers*, and *Standers* ([70]); but in this country and in the West commonly there were only two, called respectively

licly confessed the same. *Ibid.* I. 6, 3, and I. 13, 5, III. c. 43, that Cerdon, coming frequently into Church and making public confession, remained one time making public confession and then teaching in secret. Tertullian de Poenit. c. 10, says many put off penance because it was public. Theodulf ap. Gratian Caus. XXII. Qu. I. c. 171; Morinus de Poenit. v. c. 8; Natalis Alexander Hist. Eccl. Saec. 3, Diss. 6, p. 54. On the other hand, Bellarmine and Sirmond contend that, from the first, discipline was not necessarily public unless the sin was public.

(68). Theodori Poenit. I. v. 10 and 14 in H. and S. III. 181, A.D. 673, calls the lowest class "those extra ecclesiam." For suspension from entrance to the Church, see *Ecclesiastical Severity*, § 4.

(69). Cyprian Ep. 11 (Oxf. 17), 2: No one can come to Communion unless the hands of the bishop and clergy be first imposed upon him. Ep. 9 (Oxf. 16), 2; Ep. 13 (Oxf. 19), 2: When they have made confession, and have received the imposition of hands in acknowledgment of their penitence; Ep. 14 (Oxf. 20), 3. Concil. Agath. A.D. 506, Can. 15: When those who repent ask for penance, let them receive the imposition of hands and have sackcloth placed on their head by the priest (sacerdos), as is everywhere the use. Concil. Barcin. A.D. 540, Can. 8: Those who demand penance in illness and receive it, if they afterwards recover let them lead the life of penitents, excepting the imposition of hands. The Vita Hilarii III. 17 (who died 447) supposes that the bishop addresses the offenders, lays his hands upon them, and recites a prayer over them.

(70). Gregory Thaumaturgos of Neocaesarea in Epist. Can. (Can. ult.), is the first to mention four classes. Also Basil. Epist. 199, Can. ad Amphiloch. 2, Can. 22; Concil. Ancyr. A.D. 314, Can. 6, 16, 17; Concil. Nic. A.D. 325, Can. 11; Concil. Trull. A.D. 692, Can. 87, viz., flentes, audientes, substrati, consistentes.

*Penitents* and those *Excluded* from offering (71). Hearers or penitents were allowed to occupy the lower part of the Church, the *narthex* or *ferula*, up to the end of the sermon, when they were dismissed together with the heathen and probationer-catechumens, being required like them to learn again the first principles of the faith.

18. The place above the hearers was occupied by the kneelers. These were placed in Church as high up as the ambon. They remained to the prayers which were made for the approved catechumens, and then were dismissed with the Bishop's collect and imposition of hands (72). In the Western Church, kneelers, if they ever existed as a class, had disappeared before the eighth century (73), and offenders passed at once from the rank of hearers or penitents to that of standers or those excluded from offering (74). In this country there is no trace of there having ever been any class of kneelers.

19. The highest place of all was occupied by those called standers, a class who were so called because they stood with the faithful in the prayers of the Church after the dismissal of the catechumens (75). They were then themselves usually dismissed. At no time were they allowed to make an offering with the rest (76), but some of them were permitted, after a

(71). Theodori Poenit. I. v. 10, in H. and S. III. 181, mentions (1) those *extra ecclesiam*, (2) *audientes* or *poenitentes*, and (3) those *extra communionem* [oblationis]. In I. v. 10 the same persons are called auditores, who in I. v. 14, are called poenitentes.

(72). Apost. Const. VIII. 8, 9.

(73). Devoti Lib. II. Tit. II. § 75 ; Duchêsne (p. 421), however, following Funk Theol. Quartalschrift, 1886, p. 373, states that these four classes never existed in the Latin Rite, and that it may be doubted whether they were of universal observance in the East. Neither the Apostolical Constitutions nor Canons mention them, nor the Council of Antioch, A.D. 341, nor St. Chrysostom. The Constitutions, moreover, II. 16, do not prescribe a term beyond seven weeks—the length of the Oriental Lent.

(74). Devoti, § 76. See previous note.

(75). Apost. Const. VIII. 8.

(76). Concil. Nic. A.D. 325, Can. 11 : For two years let them communicate with the people in prayer without [being admitted to] the oblation.

time, to partake of the hallowed offering made by others (77). This position in penitence was often called simply *separation* or *exclusion* (78).

20. All who underwent solemn discipline were required to submit to privations of various kinds. They were clothed in sackcloth, and put ashes on their heads (79). Men had their hair clipped (80), and sometimes women also. The latter wore a penitential veil (81). They were forbidden to take part in festivities (82), to trade, or to marry (83). They fasted and gave alms, knelt whilst others stood at prayers, withdrew themselves

It is not quite clear whether they were placed by themselves, or were intermingled with the faithful in Church.

(77). Theodori Poenit. I. XII. 4 in H. & S. III. 186: Penitents, according to the canons, may not communicate until the consummation of penance, but we, out of mercy, allow them to, after a year or six months. *Id.* I. v. 10, *Ibid.* 181: If one withdraw from the Catholic Church and afterwards repent, let him do penance for twelve years, viz., four years outside the Church, six among the hearers, and two more without communion [in the offering]. The Synod [of Nicaea] says of such that in the tenth year they may receive the communion or oblation. See *Penance*, § 12.

(78). Theodori Poenit. I. XIV. 2, *Ibid.* 187: Let them [*i.e.*, newly married people] not be separated [*i.e.*, excluded from offering]. Rabanus, A.D. 849, ap. Gratian Caus. XXX. Qu. I. c. 5; Devoti Lib. II. Tit. II. § 75, and Lib. IV. Tit. XVIII. § 4.

(79). Cilicium, sack-cloth or hair-cloth, which all monks were required to wear. Ambros. de Laps. Virg. c. 8 no. 35.

(80). Concil. Agath. A.D. 506, Can. 15, forbids their being admitted to penance unless they have clipped their hair and changed their garments. Concil. Barcin. A.D. 540, Can. 6: That penitents with clipped hair, wearing the garb of religion, devote their life to prayer. Concil. Tolet. III. A.D. 589, Can. 12: Whoever applies to a bishop or presbyter for penance, let the bishop or presbyter clip him and then prescribe penance. Devoti Lib. I. Tit. I. § 11. According to Isidor de Eccl. Offic. II. 17, during penance neither hair nor beard were trimmed.

(81). Optatus Milev. contra Parmenian Lib. II.

(82). Concil. Barcinon., A.D. 540, Can. 7.

(83). Concil. Arelat. II. A.D. 443, Can. 21; Leo, A.D. 459, ap. Gratian Caus. XXXIII. Qu. II. c. 14 says that if a young man marries whilst undergoing penance, timens lapsum juvenilis incontinentiae, he may be held to have committed only a venial offence.

from the public baths and the society of their friends (84), and practised conjugal abstinence (85).

21. Solemn discipline, as it is met with in the Western Church in the sixth century, was confined to the forty days of Lent in each year (86). The subjects of it presented themselves on Ash Wednesday, barefoot and clothed in sackcloth, at the doors of the Church, where, after being admitted and repeating the seven penitential psalms, the bishop sprinkled them with water, laid his hands upon them, and covered their heads with sackcloth; then announcing to them that, as Adam was turned out of Paradise so must they be turned out of Church for their sins, he gave the order for their expulsion (87). On Maundy Thursday they were restored by the bishop with equal solemnity (88) in order to participate in the Easter Eucharist imperative on all. Solemn discipline was not, however, practised in this country until after the seventh century (89). Here, as elsewhere, the substitute for it was seclusion in a monastery for a time or for life (90), and in later times the under-

(84). Martene de Ant. Rit. Lib. I. c. 6, art. 4.

(85). Hieronym. ap. Gratian Caus. XXXIII. Qu. IV. c. 6.

(86). Gerbert Disquis v. 458; Lingard's Anglo-Saxon Church I. 329; Egbert's Excerpt. 162: Let him do penance five years or five Lents.

(87). Concil. Agath. A.D. 506, ap. Gratian I. Dist. 1. c. 64; Can. 13 Dunstan, A.D. 963: Every bishop shall be in his episcopal chair on Ash Wednesday. There every one that is defiled with capital crimes shall come to him by day and declare his sins, and then he directs a satisfaction to every one according to the quality of his crimes. Leofric Missal, p. 73, contains an Ordo agentibus publicam poenitentiam, and p. 92 an Ordo ad reconciliandum. Lynd. 336, 340, 352.

(88). Concil. Carthag. II. A.D. 390, ap. Gratian Caus. XXVI. Qu. VI. c. 1 limits public reconciliation to the bishop. Theodori Poenit. I. XIII. 2 l. c. p. 187: The reconciliation of penitents is only done by the bishop on Maundy Thursday, after penance is over. Concil. Cabil. II. A.D. 813, ap. Gratian III. Dist. II. c. 17, quoted in the *Eucharist*, note 254.

(89). Theodori Poenit. I. XIII. 4 in H. & S. III. 187: Public [*i.e.*, solemn] reconciliation is not in use in this country, because public [*i.e.*, solemn] penance is not used here.

(90). Theodori Poenit. I. VII. 1, A.D. 673, in H. & S. III. 182: Let him who is guilty of many crimes—homicide, adultery, unnatural crime, and stealing—enter a monastery and do penance all his life. Gel. Sacr. I. 16:

taking a pilgrimage, or practising almsgiving on a large scale (91).

22. Solemn discipline requires to be ended by solemn restoration (92), except at the point of death. Unless undergone by special desire (93), it is only employed for manifest and notorious crimes (94), but for some of these it is directed to be imposed (95). On the young it may not be imposed because of the frowardness of youth, nor on one of two married persons without the consent of the other (96). Women guilty of adultery were also excused from it, because the revelation of the crime might involve them in the death penalty (97), and adulterers, unless with consent of their wives (98), because solemn discipline necessitated conjugal abstinence (99). Those in Holy Orders are not allowed to be the subjects of it (100), and when it

Take him on the Wednesday at the head of the fast, cover him with sackcloth, pray for him, and shut him up (inclaudis) until the Lord's Supper day. Duchêsne 423

(91). Devoti Lib. II. Tit. II. § 79.

(92). Concil. Carthag. II. Can. 3, A.D. 390, ap. Gratian Caus. XXVI. Qu. VI. c. 1 ; Concil. Carthag. III. Can. 32, A.D. 397, *Ibid.* c. 14.

(93). Decret. Lib. V. Tit. XXXVIII. c. 7.

(94). Concil. Carthag. III. Can. 32 l. c. c. 14 : Cujuscumque autem poenitentis publicum et vulgatissimum crimen est.

(95). Const. 7 Peckham, A.D. 1281 : Whereas according to the canons greater sins, such as murders, incest, and the like . . . are to be chastised with solemn penance, . . . we charge that such solemn penance be imposed for the future according to the canons.

(96). Concil. Agath. A.D. 506, Can 15 : That no one presume to give the benediction of penance to youthful persons, and certainly not to married persons, except with consent of both, and unless they are of ripe age (aetate plena). Concil. Aurel. III. A.D. 538, Can. 24.

(97). Basil. in Beveridge Pandect. II. part 1, p. 47 ; Devoti Lib. II. Tit. II. § 78.

(98). Concil. Arelat. II. Can. 22, A.D. 443, ap. Gratian Caus. XXXIII. Qu. IV. c. 13.

(99). Hieronym *Ibid.* Caus. XXXIII. Qu. IV. c. 6.

(100). Concil. Carthag. V. Can. 11, A.D. 401. *Ibid.* I. Dist. l. c. 65 : If either presbyters or deacons are convicted of any greater offence, necessitating their removal from the ministry, hands are not to be laid on such as on penitents, as on faithful laymen, nor are they to be rebaptized and readmitted to the clerical order. Leo Epist. 90, c. 2, A.D. 458, *Ibid.* c. 67 :

has once been undergone it may never be undergone a second time (101). The mediaeval and modern practice of repeating private confession and absolution can only be justified in the case of lesser offences, on the assumption that the offender is slowly becoming what he ought to be, and that these several acts are moments in one protracted course of discipline akin to solemn discipline (102). The term penitents is, however, properly confined to those undergoing solemn discipline publicly (103).

It is contrary to ecclesiastical usage that those who have been hallowed to the rank of priesthood or diaconate should by the imposition of hands receive the remedy of penance, which usage doubtless comes from apostolical tradition, because it is written, If a priest shall sin who shall pray for him? Such as have lapsed in this position must privately seek seclusion to deserve God's mercy, where proper satisfaction, when made, may be profitable to them.

(101). Herm. Sim. III. 9 : For the servants of the Lord there is but one repentance. Tertullian de Poenit. c. 7, quoted *Penance*, note 96. Origen Hom. in Levit. 15, c. 2 (III. 262). Socrates VI. 22 mentions as a complaint against Chrysostom : Whereas by the synod of bishops repentance was accepted but once from those who had sinned after baptism, he did not scruple to say, Approach although you have repented a thousand times. Augustin ap. Gratian I. Dist. 1. c. 62, and Caus. XXXIII. Qu. III. Dist. III. c. 22 : Whence careful and healthful provision has been made that room should only once be allowed for that most humiliating penance, lest a too useful medicine should be little esteemed because of its cheapness, yet forgiveness is never denied after penance to those who sin daily. Ambros. *Ibid.* c. 2 : Some there are who think repentance may be often undergone and luxuriate in Christ ; but if they had true repentance they would know that it must not be repeated, for as there is one baptism so there is one repentance. Concil. Tolet. III. A.D. 589, Can. 11 : Some demand to be reconciled by a priest as often as they sin. Let penance be imposed on such after the ancient form. Lynd. 41, 340.

(102). Augustin Epist. 265 ad Seleuc. ; Serm. 392.

(103). Augustin ap. Gratian Caus. XXXIII. Qu. III. Dist. 1. c. 81, says there are three kinds of penitence : (1) that which leads to baptism, (2) the life-long penitence of the baptized who look forward to eternal life, and (3) penance such as fasting, almsgiving, and prayer for breaches of the Decalogue. It follows that breaches of the Decalogue should not be allowed to form part of repeated confessions. See *Penance*, note 96.

### The Foundation of Discipline—Vows.

23. The foundation of the Church's claim to exercise discipline of any kind is contract originated by a vow. A vow is defined to be a promise made to God in order to obtain some spiritual good. To render it lawful, it must fulfil three conditions: (1) It must have some good object in view (104); for nothing that is wrong can be offered to God (105). (2) It must be possible of execution by divine aid; for it is mockery to promise what cannot be performed. (3) It must be voluntarily and deliberately made (106); for what is done under pressure is not the party's act, and a hasty or thoughtless promise carries with it no stability (107). Nevertheless, a vow may sometimes be made on behalf of another, such as the baptismal vow, when its object is to secure some surpassing spiritual good for him (108).

24. Vows may be generally divided into two classes: (1) private vows, and (2) public vows. Private vows are either those of a private character affecting the individual only, such as a promise to build a Church, or to undertake a pilgrimage, or to make a gift to God, or to nurse in a contagious hospital,

(104). Theodori Poenit. I. XIV. 6 in Haddan and Stubbs III. 188, orders foolish and rash vows to be set aside. Hieronym. ap. Gratian Caus. XXII. Qu. 1. c. 7 and 8, and Concil. Tolet. X. *Ibid.* c. 1, allows a vow to be taken to promote peace. *Ibid.* c. 4 and 5 permit an oath to be taken when required by lawful authority. Lynd. 203.

(105). Concil. Araus. II. A.D. 529, Can. 11: No one can rightly make a vow to God unless he has received from God the power of vowing. Ambros. ap. Gratian Caus. XXII. Qu. IV. c. 8: It is better not to fulfil an oath than to do that which is wrong. Augustin. *Ibid.* c. 20; Syn. VII. A.D. 787; *Ibid.* c. 18.

(106). Gelasius ap. Gratian Caus. XXVII. Qu. 1. c. 42, says, propria voluntate. Concil. Tolet. VI. A.D. 638, Can. 2 *Ibid.* Caus. XX. Qu. III. c. 2 and 4 and 5. Conf. Const. 18 Peckham, A.D. 1281; Lynd. 202.

(107). Concil. Aurel. II. A.D. 533, Can. 12: Let no one make a vow in Church in jest, drink, or wantonness. Alexander III. in Decret. Lib. III. Tit. XXXIV. c. 3.

(108). See *The Sacraments*, § 18; *Baptism*, § 10.

or otherwise public vows which have been taken privately. Of private vows some are approved, others tolerated only, others again forbidden; but the private taking of all vows is discountenanced, (1) because many things may be vowed rashly; (2) because the faithful are thereby deprived of the stimulus of a good example; and (3) because the person who vows loses the help of the corporate sympathy and intercession of others in the communion of saints ([109]).

25. Public vows are vows which admit to a distinct position in the Church, and render those who take them amenable to the special discipline of that position. Such are (1) the baptismal vow, (2) the renewal of vows at confirmation, (3) the ordination vow, (4) the marriage vow, (5) the monastic vow or vow of religion, and (6) the vow of canonical and feudal obedience, which is the basis of the bishop's or abbot's jurisdiction.

26. Every public vow is held to consist of three parts ([110]): (1) the proposal, promise, or simple vow, which is sometimes called the oath, because a Christian man's word should be equivalent to an oath ([111]); (2) the confirmation or profession, called the solemn vow ([112]); and (3) the consummation or

(109). Alcuin Ep. in H. and S. III. 471: The Scripture saith: A brother assisted by a brother is like a strong city. See Cavagnis III. 169.

(110). Lynd. 203 calls them Initium, Confirmatio, Consummatio.

(111). Matt. v. 37; James v. 12; Augustin ap. Gratian Caus. XXII. Qu. 1. c. 3. Leo, A.D. 459, *Ibid.* Caus. XX. Qu. 1. c. 8, distinguishes the proposition from the vow.

(112). The Thomists say that a simple vow differs from a solemn vow, as a promise does from a gift. Craisson, § 2479. A second view is that solemnity is the result of a kind of consecration. A third view is that the difference between simple and solemn vows is a purely human distinction, not being earlier than Gratian's time. The difference is, however, substantially there in the Stat. Ant. Eccl. A.D. 505, respecting widows ap. Gratian Caus. XXVII. Qu. 1. c. 1; Concil. Chalcedon A.D. 451, *Ibid.* c. 22; Augustin. *Ibid.* c. 41 and 1 Dist. XXVII. c. 2, and Hieronym. *Ibid.* c. 4, 5, 9. Devoti Lib. II. Tit. II. c. 129; Saunderson, De Jurament. Prael. 1, calls them respectively oath and vow: Per hoc distinguitur juramentum a voto. In voto transigitur cum Deo ipso ut cum parte; ast in juramento transigitur cum homine; Deus autem adducitur non ut pars sed ut testis. Hence he argues an oath may be dispensed, but not a vow.

execution. A simple vow is a promise made to or before man of some allowed thing, such as a betrothal or promise of marriage at a future date, or a promise of religion, *i.e.*, a promise to keep the rules of perfection; and perhaps the baptismal vow, taken by an infant by deputy, may be regarded in the same light. A solemn vow is a vow solemnly made before God and the Church, by one who is conscious of what he is doing (113), which irrevocably pledges him who makes it to fulfil it without excuse (114), such as the vow renewed at confirmation, the actual contract of marriage, the solemn profession made on taking orders, or on entering the religious life.

27. Simple vows, when once taken, ought to be fulfilled (115), and delay in fulfilling them calls for discipline, because of the breach of faith (116). Hence, one who has devoted himself to the religious life by a simple vow, and afterwards resumes the secular habit, may not be advanced to any degree of order (117), and may even be compelled to take the solemn vow of religion, since by God's grace and the help of a common life its obligations are capable of being fulfilled by all (118). There are, how-

(113). Craisson, § 2467.

(114). Augustin ap. Gratian Caus. XVII. Qu. 1. c. 1: When we have promised a thing to God we are bound of necessity to perform it. Gregory *Ibid.* c. 3 denounces the punishment of Ananias for not performing it. Sext. Lib. III. Tit. XV.; Suarez ap. Craisson, § 2501.

(115). Apost. Const. III. 1 and IV. 14: It is better not to vow than to vow and not to pay, repeated by Pseudo-Isidor. ap. Gratian Caus. XII. Qu. 1. c. 9. Other authorities, *Ibid* Caus. XVII. Qu. 1, and Caus. XX. Qu. III. c. 1 and 2; Theodori Poenit. II. XIV. 5 in H. and S. III. 202: Laymen ought not to delay to fulfil their promises, because death is not slow. Concil. Chelsea A.D. 787, Can. 18; Alfred's Law 14, A.D. 877: If one implead another of breach of promise to God, and will accuse him for not having performed that which he had plighted, let him first make oath of it in four Churches; and the other, if he will justify himself, let him do the same in twelve. See *Discipline of the Religious Life*, § 27.

(116). See *Excesses.*

(117). Theodori Poenit. I. IX. 2 in Haddan and Stubbs III. 185: If any one who has vowed himself to God has afterwards assumed the secular habit, he ought not to be advanced to any step [of order] at all.

(118). Concil. Tolet. VI. A.D. 638, ap. Gratian Caus. XX. Qu. III. c. 2; Const. 18 Peckham, A.D. 1281: Such nuns as have voluntarily led a regular

ever, cases in which a simple vow may be annulled; but this can only be done with the sanction of the Church, or, as it is said, by dispensation for some good cause (119). A simple vow may also by permission be commuted into one of another kind (120), and any vow into a vow of religion, even without permission (121).

28. A dispensation from a simple vow may be granted by a diocesan bishop (122) or the superior of an order (123): (1) if change of circumstances renders it impossible to fulfil the vow literally, (124) in which case an equivalent ought to be substituted (125); or (2) if the person who makes it or the thing vowed is in the power of another, and the other refuses to consent (126); —Thus a parent may annul the vow of a child (127), the husband

life in a college for above a year we declare to be deemed *ipso facto* professed, so as not to be permitted to return to a secular life, though they are to be solemnly consecrated or veiled by the bishop. We give the same judgment as to monks, that if they have for above a year willingly worn the religious habit in a monastery and then, rejecting it, return to a secular life, they be repelled as apostates. Cavagnis III. 169.

(119). Ambros. ap. Gratian Caus. XXII. Qu. IV. c. 2; Cavagnis III. 169; Chap. CLIV. 7.

(120). Alexander III. to Bishop of Exeter in Decret. Lib. III. Tit. XXXIV. c. 1, allows a pilgrimage vow to be commuted. *Id.* to Bishop of Norwich, *Ibid.* c. 2; Innocent III. to Archbishop of Canterbury, *Ibid.* c. 8, 9.

(121). Alexander III. *Ibid.* c. 4.

(122). Theodori Poenit. II. XII. 15 in Haddan and Stubbs III. 200, and Caus. XXVII. Qu. II. c. 23: If any one in the secular habit vows a vow without the bishop's consent, the bishop, if he will, has power to change his sentiment.

(123). Theodori Poenit. II. VI. 9, *Ibid.* p. 195; Lynd. 212.

(124). Alexander III. to Archbishop of Canterbury in Decret. Lib. III. Tit. XXXIV. c. 8.

(125). Theodori Poenit. II. XIV. 6, *Ibid.* p. 203: Similarly cattle [which have been vowed] may be changed for those of equal value in case of necessity.

(126). Theodori Poenit. I. XIV. 7, *Ibid.* p. 188; II. VI. 9, *Ibid.* p. 195; Gratian Caus. XXVII. Qu. II. c. 22: Caus. XX. Qu. II. c. 2; Const. 28 Edmund, A.D. 1236.

(127). Gratian Caus. XXXII. Qu. II. c. 14; and Caus. XXII. Qu. V. c. 15.

the vow of a wife (128), an abbot the vow of a monk (129);—or (3) if it is a rash vow, or a vow to do evil (130). But when the vow is to do some good to a fellow-Christian, no dispensation can take effect without the consent of the person interested. Hence a bishop cannot dispense from the vow to profess the religious life without the consent of the abbot who is interested, nor annul a vow to enter a stricter order (131).

29. The effect of a solemn vow, *i.e.*, a vow solemnly professed before God and the Church, is to render all acts done contrary thereto not only irregular, and therefore the subject-matter for discipline (132), but also in Christian communities invalid, except a dispensation has been granted (133). Hence solemn vows are not allowed to be taken except (1) by persons of full age (134), and (2) after previous probation (135). Moreover, no dispensation can entirely release from a solemn vow (136), the substantial

(128). Theodori Poenit. I. XIV. 7, *Ibid.* p. 188 : A woman may not make a vow without her husband's consent. If she do, the vow may be annulled, and she should do penance as the priest enjoins. Concil. Compend. A.D. 756, ap. Gratian Caus. XXXIII. Qu. V. c. 6.

(129). Theodori Poenit. II. VI. 9, *Ibid.* p. 195 : A monk may not take a vow without the abbot's consent. If he do, it should be annulled.

(130). Isidor. ap. Gratian Caus. XXII. Qu. IV. c. 19, quoted note 172.

(131). See *Discipline of the Religious Life*, § 15.

(132). Concil. Chalcedon A.D. 451, Can. 7 ap. Gratian Caus. XX. Qu. III. c. 3, anathematises those who give up orders or religion.

(133). Const. 45 Langton, A.D. 1222, regarding regulars as dead persons, forbids them to make a will. The law of this country considered them dead persons, and they were in consequence not able to sue nor to be sued in a court of law before 31 Hen. VIII. c. 6. Sext. Lib. III. Tit. XV. c. 1.

(134). Egbert's Excerpt. 91, A.D. 740, says 25. Const. 41 Langton, A.D. 1222.

(135). Const. 18 Peckham, A.D. 1281, prescribes one year. See *Discipline of the Religious Life*, § 23. Boniface VIII. in Sext. Lib. III. Tit. XIV. c. 3.

(136). Leo, A.D. 458, ap. Gratian Caus. XX. Qu. III. c. 1 : A monk's vow undertaken voluntarily and of free choice cannot be abandoned without sin. For one ought to pay to God what he has vowed. Egbert's Excerpt. 65, A.D. 740 ; Innocent III. in Decret. Lib. III. Tit. XXXV. c. 6 : The renunciation of property and the preservation of chastity are so bound up with the monastic rule that not even the pope can grant a license to dispense therewith.

obligation of which extends to the end of life (137); but it may release from the literal fulfilment of it, by granting exemption from penal discipline in the external tribunal (138), and also render acts valid which would otherwise be invalid (139).

### Privileges, Dispensations, and Licenses.

30. To prevent the Church's rules or any religious rule or vow from becoming oppressive, and a hindrance to that holiness which they are intended to promote (140), two general maxims of practice have been laid down: (1) that all canons made by the Church in restraint of freedom must be construed strictly (141); and (2) that for good and sufficient reason privileges, dispensations, and licenses may be granted by proper authority (142). And since an obligation or disability may be

(137). Decret. Lib. III. Tit. XXXIV. c. 10 and 17. See *Order*, § 40.

(138). This has been done in this country by the general dispensation of the civil power by statutes 33 Hen. VIII. c. 29, and 5 and 6 Ed. VI. c. 13.

(139). Decret. Lib. III. Tit. XXXIV. c. 10.

(140). Socrates v. 22: Neither the apostle nor the evangelists have anywhere imposed the yoke of servitude on those who have embraced the Gospel, but have left Easter and every other feast to be honoured by the gratitude of the recipients of grace. . . . The Saviour and His apostles have by no law enjoined us to keep this feast, nor in the New Testament are we threatened with any penalty for the neglect of it. . . . The apostles had no thought of appointing festival days, but of promoting a life of blamelessness and piety. . . . Since no one can produce a written authority, it is evident that the apostles left each one to his own free will in the matter, to the end that the performance of what is good might not be the result of constraint and necessity.

(141). Sext. Lib. v. Tit. XII. c. 5, Rule 15; Lynd. 40, 75, 76, 171, 253, 268, 283.

(142). Gelasius, A.D. 494, ap. Gratian Caus. I. Qu. VII. c. 6: We are compelled . . . to reconsider the decrees of the paternal canons, and to measure backwards the precepts of our predecessors, that these rules which the necessity of present times require to be relaxed, we may temper as far as possible by the employment of diligent consideration. Innocent I. *Ibid.* Caus. II. Qu. I. c. 7: That which has been appointed by way of remedy for a temporal necessity did not exist in primitive times . . . and may also be laid aside when necessity is past. Gregory *Ibid.* Caus. I. Qu. VII. c. 11.

created either by a general rule of law or by the party's own act, so relief may be had from either upon proper cause shown.

31. A privilege may be defined to be a private law conferring some special advantage on a particular place or body of men within the Church, at variance with the generally received law (143), which either exists by custom or by some special grant. Such is the privilege enjoyed by certain Churches called peculiars, which was enjoyed by custom until recent times; or that bestowed upon certain monastic houses and orders termed exempt jurisdictions by grant, making them independent of the ordinary territorial relations and self-governing in spirituals. A dispensation is relief from the obligation of obedience to a general rule, or from the obligation incurred by the party's own act, which is granted either in consideration of infirmity or to obtain some greater good, such as dispensation from observing the rule of fasting, or from a disability for ordination, or from fulfiling his own oath (144). A faculty or license is a permission to do that which would ordinarily be contrary to rule, which is given by virtue of some written or customary law authorising such permission to be given in certain cases (145), such as a permission to be non-resident on a benefice for purposes of study, or a license to marry without banns (146).

(143). Gregory ap. Gratian Caus. XVI. Qu. 1. c. 52, mentions the exemption of some bishops from archiepiscopal control. In Decret. Lib. v. Tit. XXXIII. c. 1 complaint is made of the Templars abusing their privileges. Craisson, § 156, defines a privilege as a private law making some special concession contrary to or beyond law.

(144). Iren. Haer. IV. 15, 2: In the New Testament the apostles are found granting certain dispensating precepts in consideration of human infirmity, lest such persons, having grown obdurate and despairing of salvation, should become apostates. . . . In the Old Testament the same God permitted similar indulgences for the benefit of His people. Cyril in Syn. VII. A.D. 787, ap. Gratian Caus. I. Qu. VII. c. 15; Ayliffe 219, 353; Craisson, § 957.

(145). Concil Lat. III. A.D. 1179, Can. 13 in Decret. Lib. III. Tit. IV. c. 3, and Concil. Lat. IV. A.D. 1215, *Ibid.* Tit. V. c. 30, and Const. 14 Langton, A.D. 1222, require personal residence in a benefice-holder. Yet a bishop is authorised to give leave of non-residence for a limited time for a definite cause.

(146). Urban II. A.D. 1083, ap. Gratian Caus. I. Qu. V. c. 3: Let him have

32. A dispensation may be granted (1) at the party's own instance, in the cases allowed by custom, when it is termed a *legitimation* or *justice* (147); or (2) on the spontaneous initiative of the dispensing authority, when it is termed a *grace* or *favour*. Dispensations granted at the party's instance are said to be odious, and are therefore construed strictly (148). Those granted by way of grace or favour may have an extended and favourable construction put upon them (149).

33. To be lawful and valid every dispensation must fulfil three conditions: (1) It must be conceded by competent authority; (2) it must not be a relief from any obligation created by divine law (150); (3) it must be granted for some good cause. Every dispensation, therefore, should specify the law with which it dispenses, and the cause for which it is granted, and unless it does so, it is accounted null and void (151). It is a matter for the judge's discretion to decide whether the cause is sufficient. A faculty or license, on the other hand, may not be granted or withheld at discretion; but whenever the circumstances exist in which custom or law authorises the permission to issue, it may be claimed as a right, and any attempt to withhold it may be set aside on appeal as an act of favouritism or prejudice.

34. The competent authority to grant a dispensation is the same by which the rule proposed to be departed from was originally made. Dispensations may therefore be granted (1) by an ecumenical synod; (2) by a provincial synod or its representative, the metropolitan; and (3) in some few cases by a territorial bishop. But since no inferior can dispense with the

a license by the bishop's leave and the consent of the brethren to discharge the office of a priest there. Const. 1 Reynolds, A.D. 1322; Lynd. 48.

(147). Ayliffe 219. This is denied by Devoti Lib. II. Tit. II. § 121, note 2. The recipient of a marriage dispensation is said to be consoled (consolari).

(148). Devoti Lib. I. Tit. VI. § 14.

(149). Ayliffe 220.

(150). Ayliffe 220.

(151). "If contrary to Holy Scriptures and the laws of God"—these are not included in the despensations which 25 Hen. VIII. c. 21 sec. 3 allows the archbishop to grant.

law of a superior (152), unless authorised by the superior so to do, neither a metropolitan can dispense from an ecumenical, nor a bishop from a provincial canon, except in those cases in which they are authorised so to do either by canon or custom (153). Such authorised dispensations are more properly called faculties or licenses.

35. Formerly the power of dispensation was exercised on behalf of the ecumenical synod by the pope or his legates, in some cases by custom (154), in others by express canon (155).

(152). Innocent III. in Decret. Lib. I. Tit. XI. c. 15; Concil. Vien. A.D. 1311, in Clem. Lib. I. Tit. III. c. 2: The law of a superior cannot be abrogated by an inferior. Ayliffe 220: A bishop cannot grant a dispensation contrary to the common law of the Church; for by a dispensation the laws are violated, and it is not lawful to violate the laws of his superior. Concil. Tolet. IV. A.D. 633, ap. Gratian Caus. X. Qu. III. c. 8: Whatever bishop shall presume to act contrary to what we have decreed, the same shall be liable to canonical correction as a transgressor of synodal decrees, and a violator of the rules of the fathers.

(153). Concil. Ancyr. A.D. 314, ap. Gratian I. Dist. l. c. 22, 32: If a priest or deacon have committed sacrilege, he may no longer be retained in the ecclesiastical rank. Yet it may be left to the bishop to determine whether he may be retained or not. Concil. Nic. A.D. 325, Can. 12: The bishop may use some favour towards him. Theodori Poenit. I. IV. 5 in Haddan and Stubbs III. 180: If any one slay a monk or a clerk, let him do penance seven years; it is in the bishop's power [to dispense]. I. XII. 5 *Ibid.* p. 187, *Id.* II. XII. 15, *Ibid.* p. 200: If any one in the secular habit vows a vow, the bishop, if he will, has power to change the vow. Concil. Lat. IV. A.D. 1215, Can. 19, 20, 57, 58, bestow on bishops the power of dispensing in certain cases. Lynd. 240: When any cause concerns the whole province, the archbishop is a competent judge. Ayliffe 220: He that can limit and interpret a law may in a particular case, by way of dispensation, repeal or take away for a season the force of such law, but he cannot do so entirely, though it be on a lawful account. Craisson, § 959-961, 972; Gousset Théol. Moral. I. 306.

(154). Socrates VII. 40 relates that in A.D. 434, Coelestine dispensed with the rule against translations in the case of Proclus. Devoti Lib. I. Tit. III. § 16, gives instances of such dispensations by custom from the fourth century. 25 Hen. VIII. c. 21, sec. 2 and 4, speaks of "dispensations, compositions, faculties, &c., which have been accustomed to be had at the see of Rome." See *Wedlock*, § 16.

(155). Concil. Lat. IV. A.D. 1215, in Decret. Lib. III. Tit. V. c. 28: As

The pope or the proper patriarch therefore dispensed with disqualifications for holy orders (156). He also dispensed from the obligation of a solemn oath, subject to the consent of any person who would have been injured thereby (157), and from the duty of residence on a spiritual cure (158). He also granted dispensations to hold two benefices simultaneously (159), to contract marriage within the forbidden degrees (160), and to appropriate to a nunnery a benefice with cure of souls (161). By the Reformation statutes this power was transferred in this

regards high and literate persons, when reason requires, a dispensation may be granted by the Holy See. *Ibid.* c. 29 : Let not a sentence of this kind be relaxed, except by authority of the Roman pontiff or the proper patriarch.

(156). Alexander III. in Decret. Lib. I. Tit. VI. c. 5, allows a bishop converted from schism to be consecrated immediately by virtue of a dispensation. Concil. Lat. IV. A.D. 1215, in Decret. Lib. III. Tit. V. c. 29, says the pope or the proper patriarch may dispense. Const. 37 Edmund, A.D. 1236. Boniface VIII. in Sext. Lib. I. Tit. XI. c. 1, requires the pope's dispensation in all irregularities for holy orders. Lynd. 130, 27, mentions being convicted of perjury.

(157). Therefore not with an oath of allegiance without the consent of the sovereign. Craisson, § 5242.

(158). Syn. VII. A.D. 787, ap. Gratian Caus. XXI. Qu. 1. c. 1, only allows this in villages, because of the scarcity of clergy. Const. 1 Peckham, A.D. 1279 ; Const. 24 Peckham, A.D. 1281 : We cannot dispense with pluralities. Lynd. 135, 137, states that where there is no cure of souls a bishop can grant a dispensation to hold two benefices.

(159). Nevertheless a bishop was formerly authorised to grant a license for non-residence for a period not exceeding seven years, whilst the incumbent was qualifying himself at an approved university. Lynd. 238. By Const. 8 Otho, A.D. 1237, and Const. 20 Othobon, A.D. 1268, this period was reduced to five years. Coelestin III and Innocent. III. in Decret. Lib. III. Tit. IV. c. 8 and 9, authorised fresh elections in two cases in which a dean had been non-resident for ten and four years respectively. In this country residence is now regulated by sec. 42 of 1 and 2 Vict. cap. 106. Ayliffe 220.

(160). Pseudo-Gregory, A.D. 601, to Augustin Qu. V. in Baeda I. 27 [*i.e.*, Theodore], dispenses with certain forbidden degrees, and Gregory II. did the same for Germany. The earliest personal dispensations are those of Paschal II. to Philip of France, A.D. 1104, and Innocent III. to the Emperor Otho IV., A.D. 1209. See *Wedlock*, note 128.

(161). Hobart 148 ; Gibson 89.

country to the commissary of faculties under the archbishop, but in all unaccustomed cases the archbishop is required to have a special license from the crown (162).

36. A dispensation from a canon of a provincial council may be granted by the metropolitan (163), and in the cases authorised by law by a provincial bishop (164). The latter may therefore dispense with the observance of a fast (165) or feast (166), the fasting reception of the communion (167), the residence of nuns within the convent walls (168), the publication of banns of marriage (169), an irregularity for minor orders (170), a simple vow, so that the dispensation do not prejudice another (171), or from an oath to do wrong (172). A bishop, and likewise an

(162). 25 Hen. VIII. c. 21, A.D. 1533.

(163). Lynd. 240, who, however, states, 137, that the archbishop cannot dispense from a decree of a general council.

(164). The gloss on Decret. Lib. II. Tit. I. c. 4, has given rise to much controversy. Some contend that a bishop can only dispense in the cases in which he is specially authorised so to do; others that he has an inherent power of dispensation in all, except the cases in which he is specially forbidden to dispense. Bouix de Episcopo II. 96; Stephen's Eccl. Stat. 167. See Devoti in *Wedlock*, note 157.

(165). Innocent III. A.D. 1206, in Decret. Lib. III. Tit. XCVI. c. 2.

(166). Lynd. 102, says that in case of necessity a bishop, and even a parochial incumbent, may grant a dispensation to work on Sunday. See *Liturgical Discipline.*

(167). Theodori Poenit. I. XII. 5, quoted *The Eucharist*, note 269.

(168). Const. 18 Peckham, A.D. 1281: Bishops for some necessary cause may please to have it otherwise [*i.e.*, allow nuns to be absent for more than six days]. Lynd. 212.

(169). Const. 8 Mepham. A.D. 1328.

(170). Lynd. 27.

(171). Or before it has come to the knowledge of the person to be benefited. Craisson, § 5240.

(172). Ambros. ap. Gratian Caus. XXII. Qu. IV. c. 2; Concil. Ilerd A.D. 523, Can. 7, requires a year's penance for the perjury in such a case. Isidor. *Ibid.* c. 19: In three cases oaths which have been taken must be cancelled (solvenda): (1) when an oath has been taken to do wrong, (2) when an oath has been taken rashly, and (3) when an oath has been taken by a minor which the parents disavow. Concil. Tolet. VIII. A.D. 653, *Ibid.* c. 14: Stulta vota frangenda sunt. Syn. VII. A.D. 787, *Ibid.* c. 18. Conf.

abbot (173), can also in most cases dispense his own subjects from the penalty imposed by a provincial canon (174), and, except in the cases reserved to the metropolitan, can substitute one penance for another (175). Neither, however, can dispense with the solemn forms required by law to be observed in dealing with ecclesiastical property (176).

37. As no human authority can dispense with divine laws, so no dispensation can issue which is either an infringement of natural right (177), of a fundamental precept of the Gospel, or of any apostolic rule which is an integral part of the Church's constitution (178). If, however, a question arises as to whether

*Ibid.* I. Dist. XIII. ; Alfred's Law I. A.D. 877 ; Sext. Lib. v. Tit. XII. c. 58 ; Lynd. 117. See above, § 28.

(173). Const. 44 Langton, A.D. 1222, forbids an abbot to dispense with some things. Lynd. 209. See above, § 28.

(174). See above, note 153. Decret. Lib. II. Tit. I. c. 4 ; Concil. London A.D. 1108, Can. 9 ; Lynd. 264.

(175). Decret. Lib. v. Tit. VIII. c. 2 ; Const. 12 Stratford, A.D. 1343. Lynd. 52, 261, says a pecuniary penance cannot be substituted for a corporal penance except by such authority. A bishop's dispensing powers in all accustomed cases are preserved by sec. 15 of 25 Hen. VIII. c. 21 ; sec. 4 of 13 Eliz. c. 12 ; and, under the general head of jurisdiction, by sec. 1 of 12 Car. II. c. 13.

(176). Const. 33 Langton, A.D. 1222 ; Lynd. 149, 150.

(177). Gratian I. Dist. XIII. Concil. Tolet. VIII. A.D. 653, *Ibid.* c. 1, directs that of two evils the least must be chosen, and that a man had better perjure himself than fulfil a rash vow to injure his neighbour. Alexander III. in Decret. Greg. IX. Lib. v. Tit. XIX. c. 4, says that he cannot give a dispensation to practise usury, because that is forbidden in Holy Writ. Liguori Lib. VI. No. 1119, says : In those matters in which divine right has its origin from human will, such as oaths and vows, the pope can dispense. He does not then take away the divine right, but the foundation of obligation which a man has by his own act imposed on himself. Craisson, § 693.

(178). Egbert's Ans. 13, A.D. 734 : No one acts against the Gospel or the Apostle without punishment, therefore we give no consent to adultery. 25 Hen. VIII. c. 21, § 1, recites that the pope claimed "that he hath power to dispense with all *human* laws, uses, and customs of all realms, in all causes which be called spiritual," and that it has been so used many years by the sufferance of the king and his progenitors. Hobart, p. 146. Sec. 2 limits dispensations to cases not contrary to Holy Scripture.

a particular thing is commanded by divine law or not, it is for the Church, as the interpreter of Holy Writ, to decide it.

38. No dispensation may be granted except for some good cause (179), such as the welfare of the Church (180) or the helping forward of an individual in the way of holiness; and although a bishop can validly dispense with a statute which is only of authority in the diocese, he cannot regularly do so without some good cause (181). Moreover, since the question of the goodness of the cause is one which affects the whole Christian society, the granting of a dispensation is properly a solemn act, for which the people's consent was formerly necessary (182). As such it requires judicial or extra-judicial discretion (183), and on an allegation of the improper exercise of such discretion, both the validity of one which has been granted may be called in question (184), and the refusal of one may be the subject-matter of appeal (185).

(179). Ayliffe 219; Craisson, § 970, 4406, 5238.

(180). Urban II. A.D. 1093, ap. Gratian Caus. I. Qu. v. c. 3, says that a dispensation may be granted to one innocently promoted by simony, if the welfare of the Church require it.

(181). Craisson, § 968.

(182). Euseb. VI. 43, relates that the people were unwilling that a dispensation should be granted to ordain Novatus, A.D. 250, who was disqualified because he had received clinical baptism; but that the bishop requested that it should be granted him to ordain only this one. Craisson, § 971, says that now by custom in the Roman Church the bishop uses the power independently of the chapter and clergy, and the chapter does the same *sede vacante*, unless the diocesan law has been confirmed by the pope *in forma specifica*.

(183). Cyril in Syn. VII. A.D. 787, ap. Gratian Caus. I. Qu. VII. c. 16: That we may not be thought to love contention, we embrace the communion of Bishop John, granting him an indulgence, and let him understand that in a cause of a dispensation the matter against him will not be too closely, or severely, or harshly inquired into, as the power of a dispensation is a matter requiring much concern. Judicial discretion takes the place of the consenting obedience of the brethren required by Gratian Caus. I. Qu. v. c. 3, and Ayliffe 219.

(184). 25 Hen. VIII. c. 21, § 17, authorises an appeal to the Lord Chancellor from the archbishop's refusal.

(185). Benedict XIV. *Ad apostolicæ*: Expressio et causarum earumque verificatio ad substantiam et validitatem dispensationis pertinet.

39. Absolute necessity is held to be a good cause of dispensation from almost every canonical rule (186). Thus to avoid starvation it is a venial offence to steal the necessaries of life (187). In a bad season servile work may be done on Sunday (188). When no presbyter may be had, a deacon may baptize (189), and also a layman (190). Confession can be made in an emergency to any priest (191), and a marriage may be contracted in infancy (192). In danger of death (193) confession may be made to a layman (194), a deacon may give penance (195), a priest may absolve from a reserved crime (196) and give the

(186). Egbert's Answer, 13 A.D. 734 : Necessity often breaks a law. The rule of law as laid down in Decret. Lib. v. Tit. XLI. c. 4, and Lib. III. Tit. v. c. 33, and Lib. I. Tit. IV. c. 4 : On account of necessity the unlawful becomes lawful. Lynd. 205 and 233. Lynd. 209 : A monk who has nothing to give of his own may practise charity at the expense of his order to save a man from perishing of starvation. Lynd. 38, 233 : Necessitas facit licitum quod alias foret illicitum.

(187). Augustin ap. Gratian I. Dist. VIII. c. 1 ; Decret. Lib. v. Tit. XVIII. c. 3 ; Lynd. 58.

(188). Alexander III. in Decret. Lib. II. Tit. IX. c. 3, and Baeda *Ibid.* Lib. v. Tit. XLI. c. 4 ; Lynd. 102.

(189). Gelasius ap. Gratian I. Dist. XCIII. c. 13 ; Const. 10 Edmund, A.D. 1236 ; Lynd. 63, 243, 98. See *Baptism*, note 106.

(190). John VIII. A.D. 879, ap. Gratian Caus. XXX. Qu. I. c. 7. See *Baptism*, note 106.

(191). Theodori Poenit. I. VIII. 5 in H. and S. III. 184, and I. IX. 7, *Ibid.* 185, and Gratian III. Dist. IV. c. 22, and Caus. XXVI. Qu. VI. c. 12 ; Const. 1 Peckham, A.D. 1281 ; Lynd. 185, 238. See *Penance*, note 78.

(192). Const. 30 Edmund, A.D. 1236 ; Lynd. 272.

(193). A wide extension is given to this phrase, "in danger of death." It includes going about in fear of a mortal enemy, or being surrounded by enemies, or living in a place constantly exposed to attack, or having to pass through places known to be infested with danger, or being about to undertake a perilous voyage, being about to undergo her first childbirth. Decret. Lib. v. Tit. XXXIX. c. 26 ; Lynd. 355.

(194). Lynd. 164.

(195). Concil. Westminster A.D. 1200, Can. 3 ; Const. 1 Langton, A.D. 1223.

(196). Concil. Carthag. III. A.D. 390, ap. Gratian Caus. XXVI. Qu. VI. c. 14 ; Const. 7 Peckham, A.D. 1281 ; Const. 5 Winch. A.D. 1305.

communion to one solemnly excommunicated (197), and the offices of religion may even be received from a heretic (198).

40. In this country a certain power of dispensation is allowed to the sovereign (199), not only on the ground of necessity, but because of his being consecrated with holy oil (200) to a kind of priestly office (201). In some cases local custom operates as a general dispensation, but such dispensation does not affect strangers coming from elsewhere.

(197). Concil. Nic. A.D. 325, Can. 13; Gratian Caus. XVII. Qu. IV. c. 29; Const. 16 Edmund, A.D. 1236; Sext. Lib. III. Tit. XXIII. c. 3; Const. 7 Mepham, A.D. 1328; Const. 4 Stratford, A.D. 1343; Lynd. 187.

(198). Augustin ap. Gratian Caus. XXIV. Qu. I. c. 40; Lynd. 249.

(199). Concil. Chelsea, A.D. 787, Can. 12; Alfred's Law 6, A.D. 877; Lynd. 126. Henry I. is said to have granted them freely to married clerks after the Council of Westminster in 1127. Hobart 146 says that the Crown still retains this prerogative, notwithstanding sec. 3 of 25 Hen. VIII. c. 21. Stephen's Eccl. Stat. 163.

(200). Concil. Chelsea A.D. 787, Can. 12; Innocent III. A.D. 1204, in Decret. Lib. I. Tit. XVI. § 5, says that a bishop is anointed with chrism on the head to express his authority and dignity, but a sovereign is anointed with oil on the arm to show his power.

(201). Augustin contr. Petilian II. 112: David honoured Saul alive and avenged him dead, because of the sacred unction. For Saul had not innocence, but he had sanctity, not of life but of God's sacrament. Leo Ep. 24, 115, 155, ascribes to the emperor "a sacerdotal energy" and "a sacerdotal mind." Gregor. Expos. Lib. I. Reg. c. 10: Because this unction is a sacrament, he who is advanced is rightly anointed without, that within he may be strengthened by the power of the sacramental sign. The term "Christus Domini" is used of a temporal sovereign by Gratian Caus. XXII. Qu. V. c. 19, as well as of a bishop or presbyter. *Ibid.* Caus. XXIV. Qu. III. c. 22. "Sacring" was originally confined to the kings of England, Jerusalem, France, and Sicily. See *Baptism*, § 35, note 297.

# II.

# EXCESSES.

## Subject-Matter of Personal Discipline.

1. The foundation of the personal discipline of the Church is the baptismal contract or vow. Any act or contemplated act (1) which is done or intended in violation of this vow, either by the transgressor himself or by one who is privy to it (2), is called generically an excess (3), or, according to its nature and gravity,

(1). Tertullian de Idol. c. 23 : Sins are committed in the mind and in the conscience. Origen Hom. 2 in Jud. § 5 ; Hippol. x. 29 : Evil is not consummated unless you actually commit some wickedness. But it is in regard of desiring anything that is wicked or meditating upon it that it is called sin. Chrysostom ap. Gratian Caus. xxxii. Qu. v. c. 2 : There is no sin without intention. Augustin *Ibid.* Caus. xxxiii. Qu. iii. Dist. ii. c. 21 : There are three kinds of sins—those of intention, of act, and of habit, . . . which three kinds of dead persons Christ raised. *Ibid.* Caus. xxii. Qu. v. c. 13 : He who is prepared to commit perjury is perjured before he swears, because God judges not by actions but by the heart and intentions. Lynd. 337.

(2). Cyprian Ep. 30, 3 : He is not guiltless of wickedness who has bidden it be done ; nor is he unconcerned in the crime with whose consent it is publicly spoken of, although it was not committed by him. Ep. 67, 9 ; Augustin ap. Gratian Caus. xxxiii. Qu. iii. Dist. 1. c. 23 ; Caus. xi. Qu. iii. c. 100 : Let him who consents to sinners, and defends another who is at fault, be visited with severest punishment. *Ibid.* Qu. 1. c. 22 : Not only conspirators but they who consent to them are guilty of the same crime. John viii. *Ibid.* i. Dist. lxxxvi. c. 3 ; Edgar's Law 7, A.D. 960 ; Alexander iii. to Bishop of London in Decret. Lib. i. Tit. xxix. c. 1 : Agentes et consentientes pari poena scripturae testimonio puniuntur. Lynd. 263, 338, 343, 270, 276, 314. Devoti Lib. iv. Tit. ii. § 3.

(3). Gratian i. Dist. xxv. c. 3, Pars. iii., gives three definitions of *crimina*, showing that he uses *crimina* in the sense of excesses : (1) all evil deeds, whether intentional or unintentional ; (2) all evil deeds done with intention ; and (3) those evil deeds which cause obloquy. Lynd. 347 ; Devoti Lib. iv. Tit. ii. § 1, also uses *delictum* and *crimen* interchangeably. Const. 26, Langton, A.D. 1222, and English Constitutions generally use the

a crime, a sin (*peccatum*), a fault or trespass (*delictum*) (4), and becomes as such the subject-matter of personal discipline. A crime is defined to be any open and manifest excess which calls for condemnation and punishment in the public interest (5). A sin is an excess either of act or intention (6), which not being outwardly seen, or at least if seen not causing public scandal, requires discipline in the inner rather than in the outer tribunal (7). The term fault or trespass is applied to lesser shortcomings.

2. The obligation to fulfil the requirements of the baptismal contract or vow is held to belong to different positions in the

term excess to express all crimes and faults which may be dealt with in the outer forum.

(4). Cyprian Ep. 11 (Oxf. 17), 2, distinguishes (1) smaller, and (2) the gravest and extremest sins: In smaller sins, which are not committed against God, penance may be performed in a set time: . . . how much more ought this to be observed in the gravest and extremest sins. Euseb. VI. 46 says that Dionysius of Alexandria, in 256 A.D., wrote a book on the degrees of faults. Concil. Laodic. A.D. 363, Can. 2 ap. Gratian Caus. XXVI. Qu. VII. c. 4: The time of penance must be awarded according to the quality of the crime, because of God's mercy and goodness. Apost. Const. II. 48: Distinguish all the several sorts of excesses with much prudence, the great from the little. Treat a wicked action after one manner, and a wicked word after another, a base intention still otherwise. Gratian Caus. XXXIII. Qu. III. Dist. l. c. 19: Either acts are punished as robbery and murder, or words as slanders, or writings as libels, or intentions as conspiracies. Egbert's Poenit. in Haddan and Stubbs III. 418 divides all excesses into (1) *capitalia*, (2) *minora*, (3) *minuta*. Lynd. 347 distinguishes greater crimes, which may be the subject of solemn discipline, and intermediate crimes, which call for public discipline, and 93, 174, 248, 250, 297, calls them *crimina*, *peccata*, *delicta*.

(5). Innocent ap. Gratian Caus. XXXII. Qu. V. c. 23.

(6). Iren. IV. 16, 5: We shall give account to God not of deeds only as slaves, but of words and thoughts, as those who have received the power of liberty. 1 Pet. II. 16; Syn. Rom. A.D. 502, ap. Gratian I. Dist. XCV. c. 1; Const. 26 Langton, A.D. 1222. See above, note 1.

(7). Tertullian de Poenit. c. 3: Human incapacity (*mediocritas*) judges only sins of deed, because it is not equal to pierce the lurking-places of the will. Augustin ap. Gratian 1 Dist. LXXXI. c. 1; Lynd. 93, 347: Sin does not merit [outward] accusation and punishment, except it proceeds to external action.

Church in different degrees : (1) Upon those who have been admitted to the Church in unconscious infancy ([8]) or by force ([9]) the obligation is held to rest most lightly, as being a simple vow, and from them the minimum only is expected, unless they would forfeit altogether their claim to receive the life of Christ through the sacraments. (2) Upon those who, by their own act and of deliberate choice, have become members of the Church, the obligation rests as a solemn vow, and requires to be fulfilled more strictly, without the same allowances being made as for the former class. This is the position held in ancient times by all converts, in modern times by the clergy. (3) Those who to the baptismal vow have added the vow to live the life of perfection ([10]), reproducing the communistic life of the Church of Jerusalem before the dispersion, and cultivating the martyr spirit in will if not in act ([11]), are held to the strictest fulfilment of it, as being honoured among their fellows for having voluntarily adopted the highest kind of life ([12]). Such

(8). Innocent III. in Decret. Lib. III. Tit. XLIII. c. 3.

(9). Concil. Tolet. IV. A.D. 633, Can. 28 ap. Gratian I. Dist. XLV. c. 5 : Jews must not be saved against their will, but voluntarily, that the form of justice may be perfect. For as man obeyed the serpent by the free choice of his own will, so by the conversion of his own mind at the call of God's grace each one is saved by believing. . . . But it behoves such as have been compelled to embrace Christianity, because they have been associated with the divine sacraments, . . . to retain the faith they have been compelled to hold, that the name of God be not blasphemed, and that the faith be not held cheap or vile.

(10). Matt. v. 48 : Be ye perfect, even as your Father which is in heaven is perfect. XIX. 21 : If thou wilt be perfect, go sell all that thou hast.

(11). Basil Hom. in XL. Martyr. speaks of " those who are desirous of being martyrs in will if not in act."

(12). In Acts v. 4, St. Peter, addressing Ananias, says, Οὐχὶ *μένον σοὶ ἔμενε, καὶ πραθὲν ἐν τῇ σῇ ἐξουσία ὑπῆρχε*, showing that there was no necessity, even at Jerusalem, to join the communistic society. Urban II. A.D. 1096, ap. Gratian Caus. XIX. Qu. II. c. 2 : There are two laws, one private, the other public [in the sense of applying to all]. The public law is that which is laid down by the holy fathers in their writings, and is the canon law introduced because of transgressions. . . . The private law is that which is written in the heart by the action of the Holy Spirit. . . . If any one who has a cure of souls in a church under a bishop, and lives

were the hermits and ascetics in early times, and all who now embrace the monastic or religious life. Of these three classes the two last constitute the estate known as the *spirituality* (13) or ecclesiastical persons (14), and are alone qualified to legislate upon disciplinary matters. The anointed sovereign is deemed, by virtue of the unction, to belong to this estate; and since he also, as head of the state, belongs to the temporal estate, he is usually described as a mixed person (*persona mixta*).

3. In accordance with this difference of obligation there is a difference of criminality or sinfulness in different persons in regard to excesses (15). The same excess is a greater sin in one person than another—in one of the clergy, for instance, than in a layman, in a monk than in one living in the world (16), just as the same drug is death to one person and hardly injurious to another (17). Some excesses are in themselves greater, such as simony and heresy (18). Some are relatively greater, because

after the fashion of the world, under the Holy Spirit's influence is led to seek salvation in some monastery or under a canonical rule, because he is led by private law, there is no reason why he should be restrained by the public law.

(13). Thus 24 Hen. VIII. c. 12: This realm is an empire . . . governed by one supreme head and king . . . unto whom a body politick compact of all sorts and degrees of people, divided in terms and by names of spirituality and temporality ben bounden and owen to bere next to God a natural and humble obedience.

(14). See *Duties of Order*, § 54.

(15). Gratian Caus. XXXII. Qu. II. c. 11: Ayliffe 450: One sin is greater than another in several respects, as (1) in respect of a lapse or fall from a greater good; (2) in respect of the measure and bulk of the punishment assigned to it; (3) in respect of the example which it gives to others; (4) in respect of its condition, place, time, and person; (5) in respect of the turpitude and gravity thereof; and (6) in respect of the repetition of it.

(16). Baedae Poenit. in Haddan and Stubbs III. 327; Egbert's Poenit. *Ibid.* 417: All must not therefore be weighed in the same balance, though they be guilty of the same wrong, but a distinction must be made between the rich and the poor, the free and the slave, the infant, boy, youth, young or old man, the infirm or ignorant, laymen, clerks, monks, bishops, priests, deacons. . . . See *Penance*, § 4.

(17). Augustin ap. Gratian Caus. XXIII. Qu. IV. c. 22; Lynd. 266.

(18). Gratian Caus. I. Qu. VII. c. 27; Augustin *Ibid.* Caus. XXII. Qu. II. c. 8.

of the horror and disgust they create (19), such as murder (20), and sins against nature (21). Some are greater because they are evidence of innate corruption (22), and others because of their effect upon society, such as adultery (23).

4. By the baptismal vow all Christians are pledged to three things (24): (1) to dissociate themselves from the devil and the indulgence of the lower animal nature, which brought death into the world; (2) to associate themselves with their fellow-Christians in the sacrament of unity (25) to be the light of the world by doing good to all and not invading the rights of any; (3) to consecrate themselves as a royal priesthood to a life of communion with God. All the various excesses which discipline is intended to restain will be found to be violations of one or other of these obligations, and may be fitly grouped under the three heads of adultery, murder, and idolatry (26).

5. Under the head of idolatry may be grouped all crimes which are defections from the allegiance due to God and interrupt communion with Him, of which idolatry, or spiritual fornication, is the type (27). Such are apostasy, blasphemy,

(19). Gratian I. Dist. l. c. 4; Caus. XXXIII. Qu. II. c. 8.

(20). Gratian Caus. XXXIII. Qu. II. c. 8; Const. 7 Peckham, A.D. 1281, requires such to be visited with solemn discipline. Lynd. 339.

(21). Gratian Caus. XXXII. Qu. VII. c. 11 and 13.

(22). *Ibid.* Caus. I. Qu. I. c. 21.

(23). Lynd. 316.

(24). See *Baptism*, § 29.

(25). Cyprian de Unit. Eccl. c. 6.

(26). Titus II. 12: ἵνα [1] σωφρόνως καὶ [2] δικαίως καὶ [3] εὐσεβῶς ζήσωμεν. Pacian of Barcelona Paraenesis ad Poenit. c. 4: There are three mortal sins—idolatry, murder, adultery. Const. 4 Thorsby, A.D. 1363, enumerates thirty-six greater crimes which it reserves to the archbishop, of which nine are crimes against God, nine crimes against fellow-men, four crimes against the body of Christ, and fourteen are ecclesiastical crimes. It adds, as a thirty-seventh, any notorious crime which shocks a whole neighbourhood. Ayliffe 238, divides them into (1) *impietas*, or acts contrary to piety to God; (2) *facinora*, acts contrary to justice to neighbours; and (3) *flagitia*, acts contrary to sobriety towards ourselves.

(27). 2 Chron. XXI. 11; Ps. LXXIII. 27; Tertullian de Idol. c. 1; Clem.

heresy, schism, simony, and sacrilege. Under the head of murder may be placed all crimes which are invasions of other men's rights and violations of natural justice, of which murder is a type. Such are homicide and the cognate crimes of strife and conspiracy, robbery and theft, arson, deceit, and usury. Under the head of adultery may be grouped all crimes which are indulgences of the lower animal nature, and dishonouring to the body redeemed by Christ ([28]), of which adultery is the type ([29]). Such are adultery, rape, incest, and unnatural crime.

6. In each of these classes the excesses which fall short of the enormity of a greater crime, but nevertheless obscure the Church's light in the world by causing scandal and offence, may be termed intermediate, and require discipline, but in a lower degree. Such are simple incontinency ([30]), stealing ([31]), judicial calumniation ([32]), falsehood ([33]), excess in eating ([34]) or drink-

Strom. VII. 14: He who conducts himself heathenishly in the Church, commits fornication in reference to the Church. Augustin ap. Gratian Caus. XXVIII. Qu. 1. c. 5: Idolatry and every hurtful superstition is fornication. Apost. Const. II. 23: There is no sin more grievous than idolatry. Isidor. *Ibid.* Caus. XXXII. Qu. VII. c. 15; Lynd. 334.

(28). 1 Cor. VI. 15; Hieronym. ap. Gratian Caus. XXXII. Qu. IV. c. 12.

(29). Augustin *Ibid.* c. 11, says that all adultery is fornication, but all fornication (for instance that of the unmarried) is not adultery. Yet the term adultery is used generically to express all illicit concubinage and unlawful use of the organs of procreation.

(30). Gratian Caus. XXXVI. Qu. I. and II.; Caus. XXXII. Qu. IV. c. 4; Theodori Poenit. I. II. 1 in Haddan and Stubbs III. 178, prescribes one year's penance for fornication, four for adultery. Const. 16 Edmund, A.D. 1236; Const. 7 Peckham, A.D. 1281; Const. 10 Stratford, A.D. 1342; 1 Hen. VII. c. 4, and 32 Hen. VIII. c. 10, give to ordinaries power to punish clerks for incontinency. See *Wilson* v. *Hancock*, No. 66; *Dargavell* v. *Langdon*, No. 67; *Harris* v. *Twittey*, No. 102; *Watson* v. *Thorpe*, No. 184; *Burgoyne* v. *Free*, No. 187 in Rothery's Report.

(31). See below, § 24.

(32). Gratian Caus. II. Qu. III. c. 8.

(33). See below, § 25.

(34). Gregory ap. Gratian III. Dist. V. c. 22: Vitium gulae nos tentat quinque modis. Const. 9 Peckham, A.D. 1281; Lynd. 62.

ing (35). Those which are excesses of thought only do not come within the range of public discipline (36).

### Crimes against God.

7. Of all crimes the greatest are those which are defections from the allegiance due to God, and interruptions of that communion with Him to re-establish which Christ came into the world. They are of two kinds: (1) those which are open and avowed defections from the allegiance to God, such as apostasy and blasphemy; and (2) those which are unavowed, but none the less real defections from that allegiance, resulting from self-will, such as heresy, schism, simony, and sacrilege.

8. Open and avowed defection from the allegiance due to God, when it is complete and entire, is termed apostasy (37), and of it there are three kinds: (1) the abandonment of the faith by one who has been baptized, in order to embrace heathenism or Judaism (38), or the abandonment of the faith

(35). Hieronym. ap. Gratian Caus. xv. Qu. 1. c. 7; Concil. Andegav. A.D. 453, Can. 3: Ut a violentia et crimine perpotationis abstineatur. Concil. Venet. A.D. 465, Can. 13; Theodori Poenit. I. 1 in Haddan and Stubbs, III. 177; Baedae Poenit. *Ibid.* 331; Boniface, A.D. 746, *Ibid.* 382: This is the special vice of pagans and of our nation. Neither Franks, Gauls, Lombards, Romans, or Greeks give way to drunkenness. Concil. Agath. A.D. 506, ap. Gratian I. Dist. XXXV. c. 9, orders a drunken priest to be suspended for thirty days. Concil. Clovesho A.D. 747, Can. 21; Const. 6 Edmund, A.D. 1236; Const. 2 Langham, A.D. 1367; Lynd. 119.

(36). See above, note 7.

(37). Cyprian de Laps. c. 7, calls it dissolving the allegiance to Christ (*sacramentum Christi*).

(38). Cyprian de Laps. c. 8: Could a servant of God renounce Christ when he had already renounced the devil and the world? There were three kinds of this apostasy: (1) Some wholly abjured Christianity and relapsed into Judaism, like Aquila, who, being excommunicated because of his study of astrology, joined the Jews and published a new version of the Bible. Epiphanius de Pond. et Mens. 15, Tom. II.; Devoti, Lib. IV. Tit. III. § 2. (2) Others combined circumcision and Jewish rites with Christianity, such as the Coelicolae, Cerinthians, Ebionites, Nazarenes, and Elcesaites. Gal. v. 4 calls such persons "fallen from grace." (3) Others followed Jewish observances in lesser matters. Devoti l. c. § 3. Concil.

without embracing any religion at all (39); (2) the abandonment by clergy of the clerical life; and (3) the abandonment by regulars of the religious life. Christians forsaking their allegiance to Christ under stress of persecution were anciently called the *lapsed*, but there were several degrees recognised in their crime. Those who voluntarily burnt incense before idols were termed the *thurificati*; those who took part in heathen sacrifices the *sacrificati* (40); those who purchased exemption from the penalty of being a Christian by promising to take part in the sacrifice, or by getting a friend to take part in their place, or by paying for a certificate (*libelli*) of having taken part, the *libellatici* (41).

9. By ancient custom apostates actually guilty of idolatry were not only excommunicated, but, if they had done so spontaneously, remained excommunicate for life (42). In some parts of the Church they were not even allowed the *viaticum* at the hour of death (43). Regulars who apostatised by forsaking the vow of religion were excluded from communion (44), and were

Lat. IV. A.D. 1215, Can. 70 in Decret. Lib. v. Tit. IX. c. 4, condemns the mingling of Christianity with heathenism.

(39). Concil. Tolet. IV. A.D. 633, Can. 63 ap. Gratian Caus. II. Qu. VII. c. 24: He cannot be true to men who is false to God. Lynd. 306; Ayliffe 85.

(40). Cyprian Ep. 14 ad Cler. Rom., 3, and Ep. 51 ad Antonian, 14; Augustin ap. Gratian Caus. XI. Qu. III. c. 85.

(41). Cyprian Ep. ad Antonian 51, 14; de Laps. 27.

(42). Cyprian Ep. 51, 13: If any such are seized with sickness, help is given to them in danger.

(43). Concil. Elib. A.D. 305, Can. 1; Concil. Arelat. A.D. 314, Can. 22: Apostates who never come to Church or ask for penance, and afterwards, when taken ill, seek communion, should not be allowed it, except they recover and have done proper penance. Concil. Nic. A.D. 325, Can. 13, requires the *viaticum* to be given to all who desire it at the hour of death. Const. 16 Edmund, A.D. 1236: At the hour of death absolution is to be denied to none.

(44). Concil. Chalcedon, A.D. 451, Can. 7 ap. Gratian Caus. XX. Qu. III. c. 3: Concil. Turon. A.D. 460, Can. 6; Leo A.D. 458, *Ibid.* c. 1; Concil. Tolet. VI. A.D. 638, Can. 6, *Ibid.* c. 2; Egbert's Excerpt. 65; Cnut's Law 4, A.D. 1018: We command that apostates and outlaws be gone off the land. Concil. Winton. A.D. 1071, Can. 12: That monks who have thrown off

ordered to be imprisoned for life (45). Clergy who apostatised by abandoning their order were declared excommunicate *ipso facto* (46), were accounted infamous (47), and forbidden any future exercise of their calling (48).

10. Blasphemy is open and avowed defection from the faith which is confined to words only. It includes (1) profane swearing, or taking God's name in vain (49); (2) cursing, or direct malediction of God and Christ; and (3) taking rash and improper vows which cannot be kept (50). Of all blasphemies that against the Holy Ghost is the worst, as being the unpardonable sin (51).

their habit be deemed excommunicate. Honorius III. in Decret. Lib. III. Tit. XXXI. c. 22 and 9; Const. 18 Peckham, A.D. 1281; Boniface VIII. in Sext. Lib. III. Tit. XXIV. c. 2.

(45). Honorius III. in Decret. Lib. III. Tit. XXXI. c. 5.

(46). Concil. Chalcedon. Can. 7, l. c.; Concil. Turon. A.D. 460, Can. 5; Egbert's Excerpt. 60; Concil. Westminster, A.D. 1102, Can. 11; Alexander III. in Decret. Lib. v. Tit. IX. c. 1: Clerks who, giving up the clerical order and habit, live like laymen, are in apostasy. Clem. Lib. IV. See *Order*, § 40.

(47). Gratian Caus. III. Qu. IV. c. 2: All who spontaneously transgress their own rules are called apostates, and no apostate can be received in accusation.

(48). Honorius III. in Decret. Lib. v. Tit. IX. c. 6. See *Order*, § 40.

(49). Exod. XX. 7; Matt. XXIII. 16–22; 1 Tim. I. 20; James II. 7; Rev. XIII. 6; Gratian Caus. XXII. Qu. l. c. 10, calls it blasphemy to swear by the head or hair of God. Tertullian de Idol. c. 11: Of false swearing I am silent, since even swearing is not lawful; c. 23: Christ prescribes that there is to be no swearing.

(50). Cyprian de Laps. c. 6: They swear not only rashly, but falsely. Hieronym. ap. Gratian Caus. XXII. Qu. II. c. 2: Every oath requires three things—truth, judgment, justice. If these are wanting it is not an oath, but perjury. *Isidor. Ibid.* Qu. IV. c. 19: In three cases oaths which have been taken must be broken: (1) if it is an oath to do wrong; (2) if it is a rash oath; (3) if it is an oath taken by those in the power of another which the latter disavow. Concil. Ilerd. A.D. 523, Can. 7, directs one who has sworn eternal feud to come quickly to charity, and to be excommunicated for a year.

(51). Matt. XII. 31, 32; Mark III. 28, 29; Cyprian Ep. 9, 2, considers it the sin of apostasy. Athanasius deems it to be the sin of denying that Christ is God. Ambros. de Spiritu l. c. 3, and Epiphanius Haer. 75, consider it the crime of denying the work of the Spirit, or, as we might say,

Cursing God (52) or Christ (53) is a form of apostasy for which the same course of discipline is prescribed as for idolatry (54). Rash and improper vows are ordered not to be kept, but penance to be done for breaking them (55).

11. Among unavowed defections from the faith the first place is occupied by heresy in a general sense, or the crime of self-will (56), which has been likened to a plunge into the stormy ocean in religious matters (57). It includes (1) doctrinal self-will, technically called heresy and forbidden association with heretics; (2) sacramental self-will or schism; and (3) that particular form of covetous self-will known as simony, which for the sake of gain treats sacred things as unsacred. Doctrinal self-will, or heresy properly so called, consists in choosing for oneself what to believe in regard to the faith once for all delivered to the saints, wilfully departing from what has been settled by competent synodal authority (58), or even unneces-

attributing the work of the Holy Ghost to Satanic agency. Chrysostom Hom. 41 in Math.; Pseudo-Damasus ap. Gratian Caus. xxv. Qu. l. c. 5.

(52). Job II. 9.

(53). Pliny Epist. x. 96, relates that the apostate Christians venerated the emperor's image and cursed Christ (Christo maledixerunt). Euseb. IV. 15: The governor said to Polycarp: Swear, and I will dismiss you; curse Christ. Polycarp replied: Eighty and six years have I served Him, and He never did me wrong. How can I now blaspheme my King that has saved me?

(54). Gregory IX. in Decret. Lib. v. Tit. XXVI. c. 2

(55). Ambros. ap. Gratian Caus. XXII. Qu. IV. c. 8 and 12; Concil. Ilerd. A.D. 546, *Ibid.* c. 11, orders one year's penance. Baeda *Ibid.* c. 6; Syn. VII. A.D. 787, *Ibid.* c. 18: A mendacious oath must be dissolved. See *Discipline Generally*, notes 172 and 177.

(56). Cyprian de Unit. Eccl. c. 19: [Schism] is a worse crime than that into which the lapsed have fallen, who nevertheless standing as penitents beseech God with full satisfaction. In their case the Church is sought after and entreated, in schism the Church is resisted. Here it is possible that there may have been necessity; then the will is engaged in the wickedness. Concil. Laodic. A.D. 363, Can. 32 ap. Gratian Caus. I. Qu. I. c. 66; Hieronym. *Ibid.* c. 60; Innocent *Ibid.* c. 73; Leo *Ibid.* c. 69; Concil. Brac. II. A.D. 572, Can. 70, *Ibid.* c. 68.

(57). Hippolyt. Haer. VII. 1.

(58). 1 Tim. VI. 2, 3, calls it *ἑτεροδιδασκαλία*, which Ayliffe 288 renders

sarily throwing doubts upon it (59). This is called lying in doctrine (60), and may be condemned after death (61); but holding wrong views through ignorance or traditionally is not formal heresy (62). Forbidden association with heretics includes (1) aiding, abetting, or associating with those known to be wilful heretics (63); (2) ecclesiastical tolerance (64), or communicating with heretics, on the ground that definiteness in doctrine is of no importance (65); and (3) reading

"pertinacious teaching of false doctrine." 2 Pet. II. 1; Jude 5; Cyprian Ep. 71 (Oxf. 72), 2, says of heresy: What stain can be more odious than to have stood in opposition to Christ? Hieronym. ap. Gratian Caus. XXIV. Qu. III. c. 27: Heresy is the Greek for choice, because a heretic chooses a discipline which he thinks best for himself. Whoever, therefore, interprets Scripture otherwise than the mind of the Holy Spirit, by whom it was written, requires, although he does not depart from the Church, is nevertheless a heretic, because he chooses what is worse. As Devoti Lib. IV. Tit. IV. § 2 observes: The faith is the faith of the whole Church, not of a section only. Christ promised that He would be with His Church [not with a section] to the end of time, that it might be built on a rock, and its members not tossed about by every wind of doctrine (Eph. IV. 14). Const. 9 Peckham, A.D. 1281; Gelasius *Ibid.* Qu. I. c. 1 and 2. A list of eighty-eight heresies is given *Ibid.* Caus. XXIV. Qu. III. c. 39.

(59). Decret. Lib. V. Tit. VII. c. 1: Dubius in fide infidelis est.

(60). Augustin ap. Gratian Caus. XXII. Qu. II. c. 8.

(61). Syn. V. A.D. 553, *Ibid.* Caus. XXIV. Qu. II. c. 6.

(62). Augustin Ep. 162: Those who cling to their opinion, although false and perverted, not from obstinate animosity . . . and seek after truth with cautious care, ready to embrace it when they have found it, can by no means be accounted among heretics.

(63). Ignat. ad Smyrn. c. 4: From these beasts in the shape of men you must turn away; c. 7: Keep aloof from such heretics. Polycarp ad Phil. 6: Keeping ourselves from false brethren. Ambros. ap. Gratian Caus. XXIV. Qu. I. c. 26; Pelagius *Ibid.* c. 34; Baeda *Ibid.* c. 24; Augustin *Ibid.* Caus. XXIII. Qu. IV. c. 6: To associate with evil-doers is to do evil with them or to help them in evil-doing. Const. 4 Thorsby, A.D. 1363.

(64). This must not be confounded with civil tolerance. Devoti Lib. IV. Tit. VI. § 4. Julius ap. Gratian Caus. XXIV. Qu. I. c. 41 prescribes a year's penance. Gregory *Ibid.* 42.

(65). This was the heresy of Apelles, according to Euseb. V. 13: He also said that one ought not to examine doctrine, but that each one should continue as he believed; for those who trusted in Him that was crucified would be saved if they were only found engaged in good works. Devoti

books condemned as contrary to the faith without good cause (66).

12. Schism is self-will in regard to the sacraments, and consists in violating the sacrament of unity (67), either by setting up altar against altar or by withdrawing from communion for no adequate cause (68). If persisted in, it becomes heresy, because it ignores the Church's note of unity, and it generally ends by inventing some new teaching to justify the separation (69). The setting up of altar against altar or the withdrawal

Lib. IV. Tit. VI. § 1. On the other hand, 2 John v. 10; Titus III. 10; Rom. XVI. 17. Euseb. IV. 14 relates how St. John fled out of the bath to avoid Cerinthus. Apost. Can. 45: Let a bishop, presbyter, or deacon who only prays with heretics be suspended, but if he permit him to perform any part of the office of a clergyman, let him be deprived.

(66). Heathens burnt the books of their opponents. Acts XIX. 19 relates that many brought their books and burnt them. Apost. Can. 60: If any one reads the spurious books of the ungodly, let him be deprived. Socrates I. 9 relates that the Council of Nicaea condemned Arius' book called Thalia; and I. 36 that Marcellus promised to burn his book, and was deposed for not doing so. Hieronym. ap. Gratian I. Dist. XXXVII. c. 5; Stat. Eccl. Ant. *Ibid.* c. 1: Let not a bishop read the books of the heathen; those of the heretics he may in case of necessity. Rabanus *Ibid.* c. 7. Books have been condemned in three ways: (1) by condemning certain propositions as false without regard to their author; (2) by condemning the propositions made by a certain author as false; and (3) by condemning the propositions contained in a certain book. The first and last involve questions of fact, and do not necessarily condemn the author, (1) because he may not have made them, (2) because they may not be contained in his book. Gregory in Decret. Lib. V. Tit. VII. c. 4: Since Coelestinus and Pelagius were condemned in the synod of Ephesus, how can those propositions be received whose authors have been condemned? Devoti Lib. IV. Tit. VII. § 6.

(67). Cyprian Ep. 41 (Oxf. 45), 14; Ep. 75 (Oxf. 69), 6; de Unit. Eccl. c. 7 and 23.

(68). Devoti Lib. IV. Tit. V. § 2.

(69). Hieronym. in cap. 3 Ep. in Titum. ap. Gratian Caus. XXIV. Qu. III. c. 26: Between heresy and schism there is this difference, that heresy involves perverse teaching, whereas schism also causes separation from the Church, because of some episcopal dispute. But this must be understood at the beginning, for no schism goes on for long without inventing some heresy to justify its separation from the Church.

of one part of the Church from communion with the universal Church is termed *external* schism (70); the refusal of an individual to hold communion with his own proper bishop or incumbent *internal* schism (71).

13. Heretics and those who create schisms in the Church are directed to be excommunicated if they do not repent after a first and second admonition (72); and if they die excommunicate, to be deprived of Christian burial (73). Those who withdraw from the communion of their bishop (74), unless the bishop's heresy, apostasy, or schism was the cause (75), and

(70). Cyprian ap. Gratian Caus. XXIV. Qu. I. c. 19. Apost. Can. 32: If any presbyter despises his own bishop, and assembles separately, and fixes another altar when he has nothing to condemn in his bishop, either as to piety or righteousness, let him be deprived . . . and let the laity be suspended. Concil. Carthag. II. A.D. 390, Can. 8, anathematises a priest who sets up another Eucharist apart from his bishop.

(71). Concil. Afric. Can. 99 ap. Gratian Caus. VI. Qu. II. c. 3: If a bishop declares he has scruples of conscience in communicating with any one, so long as the bishop refuses to communicate with him, so long let other bishops refuse to communicate with that bishop, that a bishop may take care not to bring a charge against any one which he cannot establish by proof. Hincmar, A.D. 866, *Ibid.* Caus. XXIV. Qu. III. c. 6: Let no bishop or priest excommunicate another before his cause has been proved.

(72). Titus III. 10: A man that is an heretic after a first and second admonition avoid. Iren. Haer. I. 16, 3 ap. Gratian Caus. XXIV. Qu. III. c. 13: We have learnt from apostolical authority that the spirits of those who err and cause others to err, should be delivered to Satan, that they may learn not to blaspheme. Concil. Lat. III. A.D. 1179, Can. 27, in Decret. Lib. V. Tit. VII. c. 8, orders heretics, their defenders, and harbourers, to be anathamatised, and "we forbid under pain of anathema that any one presume to receive them into his house or to have any dealings with them;" and if he should die in heresy forbids the oblation being made for him or his receiving Christian burial. Lucius III. *Ibid.* c. 9; Concil. Lat. IV. A.D. 1215, Can. 3, *Ibid.* c. 13; Lynd. 290, 293; Const. Chichele, A.D. 1416, reserves cognisance of heresy to the archbishop.

(73). Concil. Lat. III. A.D. 1179, Can. 27, l. c.; Alexander IV. in Sext. Lib. V. Tit. II. c. 2.

(74). Apost. Can. 32.

(75). Cyprian Ep. 67, 3: A people obedient to the Lord's precepts and fearing God ought to separate themselves from a sinful prelate. Syn. VII. A.D. 787, ap. Gratian Caus. I. Qu. VII. c. 15.

bishops who refuse to communicate with their clergy or subjects for no proved cause (76), and those who persist in associating with heretics (77), are directed to be excommunicated also.

14. Severer penalties were at one time prescribed for obstinate heretics, and the temporal power was appealed to to put these penalties in force (78). Their property was ordered to be confiscated (79); advocates were forbidden to defend them when accused (80); if clergy, they were ordered to be degraded (81) and handed over to the secular arm (82); those who relapsed to be imprisoned for life (83), and to be thankful to be admitted to communion and penance (84). On the other hand, those who spontaneously renounce their heresy are directed to be received to communion (85); and such as have been baptized and brought up in heresy to be reconciled with the imposition of hands (86), or by anointing with chrism if they have not been anointed before (87).

(76). Concil. Afric. ap. Gratian Caus. VI. Qu. II. c. 3, quoted above, note 71.

(77). Concil. Lat. III. A.D. 1179, l. c. Euseb. VI. 2 relates that Origen would never associate in prayer with the heretic Paul, observing even when a boy that rule of the Church. Devoti Lib. IV. Tit. VI.

(78). 25 Hen. VIII. c. 14; 1 Eliz. c. 1, sec. 36; Lynd. 284.

(79). Innocent III. A.D. 1199, in Decret. Lib. V. Tit. VII. c. 10; Boniface VIII. in Sext. Lib. V. Tit. II. c. 19 makes the confiscation *ipso jure*.

(80). Innocent *Ibid.* c. 11.

(81). Gregory IX. *Ibid.* c. 15.

(82). Pelagius ap. Gratian Caus. XXIII. Qu. V. c. 43: Those who cause rents in Holy Church should be restrained not only by exile, but also by proscription of goods and durance vile at the hands of public authorities. Paschal *Ibid.* Caus. I. Qu. VII. c. 27: Heretics, if they do not repent when admonished, should be suppressed by external powers. Gregory IX. in Decret. Lib. V. Tit. VII. c. 15; Boniface VIII. in Sext. Lib. V. Tit. II. c. 18, forbids secular authorities to oppose inquisitors, and calls on them to assist them.

(83). Gelasius ap. Gratian Caus. XXIV. Qu. I. c. 1; Gregory IX. l. c.

(84). Alexander IV. in Sext. Lib. V. Tit. II. c. 4.

(85). Concil. Aurel. IV. A.D. 541, Can. 8.

(86). Leo A.D. 458, ap. Gratian. III. Dist. IV. c. 38; Gregory *Ibid.* c. 44.

(87). Concil. Constant. A.D. 382, Can. 7; Gregory l. c. See *Baptism*, notes 136, 137.

15. In the thirteenth century the practice was introduced in the West of appointing delegates to search out and bring to trial those suspected of heresy (88). These delegates soon became permanent officials, under the title of the Holy Office or Inquisition (89), and were invested with full powers to try and punish heresy, without reference to a council or the bishop (90). They were generally chosen from the Dominicans or Franciscans, and having to do with the most important of all subjects, they were placed under a congregation of cardinals at Rome, presided over by the pope (91). The procedure of their tribunals was summary and secret (92), which afforded great opportunity for abuses (93), and led to many charges being made against them; and to them was also entrusted the delicate task of dealing with priests charged with having abused their position in the confessional (94).

(88). Concil. Verona A.D. 1185, in Decret. Lib. v. Tit. VII. c. 9, orders bishops, not only themselves but by their commissaries, to make inquiries into cases of heresy. Innocent III. in 1198 despatched Rainer and Guido into the province of Narbonne as delegates for this purpose. Devoti Lib. IV. Tit. VIII. § 3. This was an innovation. See *Ordinaries.*

(89). It is generally stated that the Cistercian monks, Arnald, Peter of Castronovo, and Rodolph, were the first permanent officials appointed by Innocent III. in 1204 (Annal. Cisterc. III. 420), but the title of Inquisitors was first given to the Dominican officials appointed by Gregory IX., A.D. 1231 (Echardi Script. Ord. Praed. I. 88). It is also clear that the Dominican, John of Marburg, was appointed substantially an inquisitor in 1227 by Gregory IX. (Bullar. Ord. Praed. I. 20, Const. 7), and, in the same year also, John of Salerno (Annal. Ord. Praed. 203, note).

(90). Concil. Lat. IV. Can. 3, A.D. 1215, in Decret. Lib. v. Tit. VII. c. 13, gives cognisance of heresy to archbishops and bishops. Const. Courtney, A.D. 1391, and Const. 1 Arundel, A.D. 1408; Boniface VIII. in Sext. Lib. v. Tit. II. c. 17, committed it equally to inquisitors, authorising them to act either separately or in conjunction with the bishops. Concil. Vien. A.D. 1311, in Clem. Lib. v. Tit. III. c. 1.

(91). Urban IV. A.D. 1273, appointed the Cardinal of St. Nicolas in carcere Tulliano chief inquisitor. Nicolaus III. appointed Cardinal Ursinius; Clement IV. Cardinal William of Toulouse. Devoti Lib. IV. Tit. VIII. § 3.

(92). Boniface VIII. in Sext. Lib. v. Tit. II. c. 20.

(93). Concil. Vien. A.D. 1311, in Clem. l. c.

(94). Either by soliciting to evil, or inquiring the names of accomplices. Devoti Lib. IV. Tit. VIII. § 16.

16. Simony is a special form of covetous self-will or heresy (95), in which money or anything of value is demanded, given, or received, directly or indirectly (96), (1) for any spiritual gift, such as absolution (97), ordination (98), the consecration of a Church (99), the election (100) or benediction (101) of a bishop or abbot, the chrism (102), or the administration of a sacrament (103); and

(95). Gratian Caus. I. Qu. I. c. 3, 11, 13, 20, 21, 28, 105, 117; and Qu. VII. c. 27. Augustin *Ibid.* Caus. XXII. Qu. II. c. 8, accounts it the greatest of crimes.

(96). Leo ap. Gratian Caus. I. Qu. I. c. 1: Grace, unless it is given and received freely, is not grace. Simoniacs do not receive freely, therefore they do not receive grace, which is chiefly operative in ecclesiastical orders. Gelasius, A.D. 494, *Ibid.* c. 6: The damnation of Simon involves the giver equally with the receiver. Concil. Brac. II. A.D. 572, Can. 3; *Ibid.* c. 22.

(97). Alexander III. in Decret. I. c. c. 14, says that it is simony for a priest to receive a reward from a public sinner to pass over the sin, or to reconcile one not truly penitent, or to refuse to reconcile one who is penitent. *Ibid.* c. 24.

(98). Gregory ap. Gratian Caus. I. Qu. II. c. 4: The bishop may not sell the hand which ordains (quam imponit). Baeda *Ibid.* Qu. III. c. 11; Alexander II. A.D. 1068, *Ibid.* c. 9; Concil. Winton. A.D. 1071, Can. 2: That no one be ordained by means of simoniacal heresy. Decret. Lib. V. Tit. III. c. 1.

(99). Concil. Brac. II. A.D. 572, Can. 5 ap. Gratian Caus. I. Qu. II. c. 1 and Qu. IV. c. 11; Concil. London A.D. 1126, Can. 3; Alexander III. in Decret. Lib. V. Tit. III. c. 10.

(100). Gregory ap. Gratian Caus. I. Qu. VI. c. 3; Concil. Lat. III. A.D. 1179, Can. 7 in Decret. Lib. V. Tit. III. c. 9.

(101). Concil. London A.D. 1126, Can. 3: That at the consecrating of bishops, blessing of abbots . . . [nothing] be demanded.

(102). Egbert's Excerpt. 12; Elfric Can. 27, A.D. 957; Concil. London A.D. 1126, Can. 2: We charge that no price be demanded for chrism, oil, baptism, visiting or anointing the sick, for the communion of the Body of Christ, or for burial. Concil. Westminster A.D. 1138, adds to the above, penance, espousals of women, and makes excommunication the penalty. Alexander III. in Decret. Lib. V. Tit. III. c. 8, 16, 21; Concil. London A.D. 1175, Can. 7; Concil. Westminster A.D. 1200, Can. 8; Concil. Lat. IV. A.D. 1215, Can. 66 in Decret. I. c. c. 42; Const. 27 Langton, A.D. 1222: To demand anything for chrism or the holy oil we judge to be unreasonable. See *The Sacraments*, note 79.

(103). Concil. Elib. A.D. 305, Can. 48 ap. Gratian Caus. I. Qu. I. c. 104; Gelasius, A.D. 494, *Ibid.* c. 99: Let priests ask no price from those about to

(2) in a secondary sense for any spiritual office (104), the presentation (105) or institution (106) to a benefice, any position of jurisdiction (107) or teaching in the Church (108), or by rendering temporal homage for spiritual things (109). It is so called from Simon Magus, who offered money to the apostles that he might receive at their hands the spiritual gift of the Holy Ghost (110).

17. There are usually said to be three kinds of simony (111):

be baptized or confirmed. Concil. Brac. II. A.D. 572, Can. 4 and 7, *Ibid.* 102, 103; Concil. Tolet. XI. A.D. 675, Can. 8, *Ibid.* c. 101; Syn. Trull. A.D. 692, Can. 23, *Ibid.* c. 100: Let no bishop, priest, or deacon who dispenses the Holy Communion ask any price from him who receives the benefit. Egbert's Excerpt. 40; Concil. Tribur. A.D. 895, *Ibid.* c. 105; Concil. Cabilon. A.D. 813, Can. 16, *Ibid.* c. 106; Innocent III. in Decret. Lib. v. Tit. III. c. 29; Const. 4 Otho, A.D. 1237, and Const. 2 Othobon, A.D. 1268, forbid money payments for penance. Lynd. 74, 278.

(104). Paschal, *Ibid.* Qu. II. c. 7: If any one says he does not buy the consecration, but only the profits which accrue after consecration, he seems to talk nonsense. For since the bodily Church, bishop, or abbot is of no avail without his bodily belongings, and since the soul has no mortal existence without the body, so he who buys one of these things without which the other does not exist leaves neither unbought. Urban II. *Ibid.* c. 8; Alexander III. in Decret. Lib. v. Tit. III. c. 8.

(105). Syn. Rom. A.D. 1078, ap. Gratian Caus. I. Qu. III. c. 3: Let a bishop who sells prebends, archdeaconries, provostships, or other ecclesiastical offices for money be suspended. Urban II. *Ibid.* c. 4; Concil. Westminster A.D. 1127, Can. 1: We forbid churches, benefices, and dignities to be in any wise sold or bought. Lynd. 109. 31 Eliz. c. 6 enforced the prohibition by adding temporal penalties. Hobart. 167; Stephen's Eccl. Stat. 450. In this country, simony is a common law as well as an ecclesiastical crime.

(106). Innocent III. to Archbishop of Canterbury, in Decret. Lib. v. Tit. III. c. 36, and Concil. Lat. IV. A.D. 1215, Can. 65, *Ibid.* c. 41.

(107). Innocent. III. l. c. c. 38, applies this to a vicar-generalship or any ecclesiastical administration.

(108). Decret. Lib. v. Tit. v. c. 1, 2, and 3.

(109). Alexander III. in Decret. Lib. v. Tit. III. c. 17, but Const. 12 Clarendon, A.D. 1164, requires homage in respect of the temporal barony.

(110). Acts VIII. 18.

(111). Nicolaus II. A.D. 1059, ap. Gratian Caus. I. Qu. I. c. 107, distinguishes (1) simony in which both parties are guilty; (2) simony in which the person ordained, but not the ordainer, is guilty; and (3) simony

(1) *true*, (2) *conventional*, and (3) *confidential*. In true simony, both he who gives and he who receives anything of value for a spiritual gift or office are equally guilty. So, too, are all who take part, directly or indirectly, as intermediaries. Conventional simony consists in a promise to give when no money passes, or in a giving and receiving by one of the parties only, to which the other is not privy, as when a gift is made by a friend (112), or money or anything of value is given to one who will have influence with a bishop or patron (113). Confidential simony consists in accepting a benefice to hold for the use of another, or under a secret promise to resign, or in resigning a benefice in consideration of money, a pension, or some other benefit (114). Either true or conventional simony may be committed (115) (1) by hand, or direct payment; (2) by laying another under an obligation (116), or indirect payment; and (3) by making interest on behalf of an unworthy candidate, or corrupt payment (117).

18. By ancient rule the penalty for obtaining orders by simony is perpetual deposition (118), and relegation to a mona-

in which the ordainer, but not the ordained, is guilty. The two latter are forms of conventional simony. Urban II. *Ibid.* Qu. v. c. 3, allows some consideration to be shown in the second case, and Nicolaus II. *Ibid.* l. c., allows it generally in the third; but Innocent III. to the Prior of Canterbury, in Decret. Lib. v. Tit. III. c. 35, forbids any one to receive orders from one whom he believes to be a simoniac. Devoti Lib. IV. Tit. IX. § 2.

(112). Alexander III. in Decret. Lib. v. Tit. III. c. 23, advises a man to resign in such a case.

(113). Urban II. ap. Gratian Caus. I. Qu. v. c. 3.

(114). Alexander III. to bishops of Exeter and Worcester, in Decret. Lib. I. Tit. XXXV. c. 4.

(115). Gregory ap. Gratian Caus. I. Qu. l. c. 114.

(116). Alexander III. to Archbishop of York, in Decret. Lib. v. Tit. III. c. 12.

(117). Gregory ap. Gratian Caus. I. Qu. l. c. 120; Paschal II. *Ibid.* c. 125; Concil. Tolet. X. A.D. 656 *Ibid.* I Dist. LXXXIX. c. 6, forbids a bishop to exercise favouritism.

(118). Concil. Chalcedon, A.D. 651, Can. 2 ap. Gratian Caus. I Qu. l. c. 8: If any bishop shall ordain for money, and bring down to sale the grace which cannot be sold, . . . let him who is convicted of having attempted this forfeit his own degree, and let him who has been ordained benefit

stery for life (119). The penalties originally prescribed for obtaining orders by simony were afterwards extended to obtaining offices by simony, but not without some relaxation of their severity (120). An office or benefice obtained by true simony is held to be absolutely void (121), and if the simony is known the guilty party is bound to avoid it (122). Where, however, there has only been conventional simony, he may be dispensed with (123), if either (1) such simony has been perpe-

nothing by the ordination. Syn. VII. A.D. 787, *Ibid.* c. 2; Syn. VIII. A.D. 869, *Ibid.* c. 9; Gregory *Ibid.* c. 12; Urban II. A.D. 1095, *Ibid.* c. 110; Lucius III. in Decret. Lib. v. Tit. III. c. 6; Alexander III. *Ibid.* c. 11, 13.

(119). Ambros. ap Gratian Caus. I. Qu. l. c. 7.

(120). Concil. Lat. I. A.D. 1123, ap. Gratian Caus. I. Qu. l. c. 10; Concil. Westminster A.D. 1127, Can. 1: We forbid churches, benefices, or dignities to be in any case sold or bought. If the offender be a clergyman, let him be degraded; if a layman, outlawed and excommunicated. Concil. London A.D. 1175, Can. 9; Alexander III. to Bishop of Worcester in Decret. Lib. v. Tit. III. c. 15. Const. 12 Langton, A.D. 1222, forbids a man to resign and accept the vicarage afterwards, "because in this case some unlawful bargain may be suspected." Const. 18 Langton, and Const. 24 Edmund, A.D. 1236, require an oath against simony from presentees. Const. 12 Otho, A.D. 1237; Const. 33 Othobon, A.D. 1268: Because a presentee often agrees with a patron to pay him a certain annuity, we, intending to obviate this simony, do wholly revoke all such promises and contracts. Boniface VIII. in Sext. Lib. III. Tit. VII. c. 2; Const. 1 Reynolds, A.D. 1322; Const. Courtney, A.D. 1391: That all presentees to ecclesiastical benefices make oath that they have not given or promised, directly or indirectly, by themselves or others in their employ, for the presentation to the presenter, or to any other persons whatever. 31 Eliz. c. 6 visited simony with legal penalties.

(121). Concil. Placent. A.D. 1095, ap. Gratian Caus. I. Qu. III. c. 5: Whatever in the way of holy orders or ecclesiastical property has been acquired by gifts or promises of money, we declare to be null, and never to have any force. Concil. Lat. II. A.D. 1139, *Ibid.* c. 15.

(122). Alexander III. in Decret. Lib. v. Tit. III. c. 20; Innocent III. *Ibid.* c. 33.

(123). Gelasius ap. Gratian Caus. I. Qu. VII. c. 15; Leo IV. *Ibid.* c. 6; Nicolaus II. *Ibid.* Qu. l. c. 114, says if he was not party to it; because Augustin *Ibid.* Qu. IV. c. 1, says: No one's crime taints him who is ignorant of it. Lucius III. in Decret. Lib. v. Tit. III. c. 22; Gregory IX. *Ibid.* c. 46.

trated by a third party to avoid his election (124), or (2) if it has been done against his prohibition (125). But so strict is the law against the semblance of simony, that even for ordaining any one on condition that he shall support himself, a bishop is ordered to be suspended for three years (126).

19. It is also accounted simony, but not of equal gravity, for any one to pay money, or to enter into any agreement (127), in order to be allowed to make the profession of religion or to be enrolled among the members of any religious house or corporation (128). One who has been guilty of this offence is required to embrace a stricter rule (129), or to be deposed from his position, unless he is otherwise a man of approved life (130), and the house or corporation taking the gift to be suspended (131). Nuns are, nevertheless, allowed to give a dower to their convent (132), but canons are forbidden upon election to forego their right to fruits and distributions, even for a limited period (133).

20. In general the treatment of sacred persons and things as unsacred, or the attributing of sanctity to profane persons and things, constitutes the crime of sacrilege (134). It is sacrilege

(124). Coelestin III. in Decret. Lib. v. Tit. III. c. 27.

(125). Innocent III. *Ibid.* c. 33.

(126). Honorius III. *Ibid.* c. 45.

(127). Urban III. in Decret. Lib. III. Tit. XIX. c. 5.

(128). Concil. Westminster A.D. 1127, Can. 3 : We condemn all demands of money for admitting monks, canons, or nuns.

(129). Clemens III. in Decret. Lib. v. Tit. III. c. 25 ; Concil. Lat. IV. A.D. 1215, Can. 64, *Ibid.* c. 40.

(130). Urban II. A.D. 1095, ap. Gratian Caus. I. Qu. v. c. 2.

(131). Alexander III. in Decret. Lib. v. Tit. III. c. 19.

(132). Devoti Lib. IV. Tit. IX. § 14.

(133). Gregory IX. in Decret. Lib v. Tit. III. c. 44, says, not although there be a custom so to do.

(134). Hieronym. ap. Gratian Caus. XI. Qu. III. c. 57 : He who calls that which is holy unholy and that which is unholy holy is abominable in God's sight. Ambros. *Ibid.* c. 58 : If any one believing a man to be holy who is not holy joins him to the Body of Christ, he violates Christ, of Whose body we all are members. Pseudo-Gregory III.'s Poenitent. Can. 2 in Wasserschsleben, p. 538 : He is called sacrilegious who treats sacred things as unsacred (qui violat sacra) or steals sacred things. And this is

against persons (1) to use violence to one in holy orders or to one who has embraced the religious life (135) otherwise than in self-defence (136); (2) to violate the person of a nun (137); or (3) to abuse a position of hallowed authority or obedience for selfish ends, as for a subject to violate the allegiance due to an anointed sovereign or to a superior in religion (138), or for a liege-lord to abuse his relations to a liege-man (139), or for a

the greatest crime of all. Const. 4 Thorsby, A.D. 1363; Lynd. 256, 258, 315. Devoti Lib. IV. Tit. XI. § 1 distinguishes three kinds of sacrilege—*personal*, *local*, and *real;* but local sacrilege is only one form of sacrilege against things.

(135). Laws of Satisfaction, A.D. 725; Syn. VIII. A.D. 869, Can. 3 ap. Gratian Caus. XVII. Qu. IV. c. 22: If any one seizes or strikes a bishop, unless he [the bishop] has been canonically condemned, . . . let him be anathematised. If he treats a presbyter or any other clerk so let him do penance and be deposed. Concil. Mogunt. A.D. 847, *Ibid.* c. 24; Concil. Troslei A.D. 909, *Ibid.* Caus. XXII. Qu. III. c. 22: Whoever by stealth uplifts his hand against the Lord's anointed, *i.e.*, a bishop or presbyter, because this is a grave sacrilege, and if any one destroys, damages, or burns a church, because this is the greatest sacrilege, the holy synod decrees that all his goods be confiscated and himself be confined in a monastery all the days of his life. Can. 38 Dunstan, A.D. 963; Concil. Westminster A.D. 1138, Can. 10: Let him be struck with anathema that kills a clerk, monk, or nun, or lays wicked hands on such. 9 Ed. II. St. I. c. 6; Alexander III. in Decret. Lib. V. Tit. XXXIX. c. 5.

(136). Alexander III. in Decret. Lib. V. Tit. XXXIX. c. 3 and 4; Clemens III. *Ibid.* c. 24.

(137). Concil. Trull. A.D. 692, ap. Gratian Caus. XXVII. Qu. I. c. 6; Gregory *Ibid.* c. 29. Cap. Franc. *Ibid.* c. 37; Alfred's Law 6, A.D. 877: If a man take a nun out of a convent . . . let him pay 120 shillings, half to the king, and half to the bishop and the lord of the church to whom the nun belonged. Concil. Westminster A.D. 1138, Can. 10; Concil. Lat. II. A.D. 1139, *Ibid.* Qu. IV. c. 29.

(138). Gratian Caus. XXII. Qu. V. c. 12: If any layman profanes the oath of allegiance to his king and lord by violating it, and afterwards perversely and treasonably assails his kingdom, because he commits sacrilege by raising his hand against the Lord's anointed (in Christum Domini Caus. XI. Qu. III. c. 11, 13, 14, 27), let him be anathema. *Id.* Caus. XXIV. Qu. III. c. 22 says the same of a bishop or priest. Alexander III. in Decret. Lib. I. Tit. III. c. 5; 25 Ed. III. St. V. c. 2, A.D. 1350: To his prelate a man oweth faith and obedience. See *The Diocese.* Honorius III. quoted below, note 284; Lynd. 11.

(139). Fulbert ap. Gratian Caus. XXII. Qu. V. c. 18: The lord also must

superior in religion to impose an excessive spiritual punishment to further his own private objects (140). This kind of sacrilege was formerly visited with excommunication *ipso facto* (141) in addition to other penalties (142), and absolution from it was reserved to the pope only (143).

21. Sacrilege against things is committed (1) by treating sacred things as unsacred (144), as by reiterating the sacrament of baptism, confirmation, or order (145), converting consecrated property to ordinary uses (146), violating ecclesiastical liber-

in all such matters do his duty towards his liege-man. Otherwise he commits a breach of faith.

(140). Concil. Agath. A.D. 506, Can. 3 ap. Gratian Caus. XI. Qu. III. c. 8 : If bishops, in neglect of priestly moderation, presume to excommunicate the innocent or those guilty of trifling offences, let them be admonished in writing by neighbouring bishops of the same province, and if they refuse to obey, be put out of communion until next synod-time. Gregory *Ibid.* c. 60 : He forfeits the power of binding and loosing who exercises it [to suit] his own will, and not according to his subject's deserts. *Id. Ibid.* I. Dist. CXXIV. c. 2 ; Isidor. *Ibid.* I. Dist. XLV. c. 2. Rabanus *Ibid.* Caus. XXIV. Qu. III. c. 5 : Many bishops (sacerdotes) say that they punish faults out of zeal for God. But when this is done without discrimination it is a kind of sacrilege, and whilst they rush headlong to amend others they themselves are guilty of a deeper fault. Even nowadays it is not quite an unknown thing for a prelate to abuse his claim to obedience to protect his own purse ; and in one case one who was guilty of so doing did not scruple afterwards to defend his conduct against a simple claim for justice by proclaiming a reluctant act of obedience to be an acknowledgment of a non-existing crime.

(141). Nicolaus ap. Gratian Caus. XXII. Qu. IV. c. 23 prescribes excommunication after the third warning ; but Syn. VIII. A.D. 869, *Ibid.* c. 22 prescribes the anathema. Const. 1 Langton, A.D. 1222, makes it *ipso facto*.

(142). Gratian Caus. XXII. Qu. IV. c. 21 and 26.

(143). Concil. Westminster A.D. 1138, Can. 10 : Let none but the pope give him penance at the last, unless in extreme danger of death. Concil. Lat. II. A.D. 1139, *Ibid.* Caus. XVII. Qu. IV. c. 29 ; Clemens III. in Decret. Lib. V. Tit. XXXIX. c. 19.

(144). Synod. Rom. A.D. 878, ap. Gratian Caus. XVII. Qu. IV. c. 21, enumerates (1) violating the precincts of a church, (2) carrying away holy things, or (3) things placed for safe keeping in holy places.

(145). Augustin ap. Gratian Caus. I. Qu. I. c. 97 ; Alexander III. in Decret. Lib. V. Tit. IX. c. 2.

(146). Apost. Const. 73 ; Concil. Ancyran. A.D. 314, ap. Gratian I. Dist.

ties (147) or immunities, or entrusting Church offices to Jews and unbelievers (148). It is committed (2) by treating profane things as sacred, as by practising divination or soothsaying (149), either by lots (150), observation of the stars (151), the flight of birds, intestines, or the palms of the hands (152); keeping lucky

l. c. 22; Ambros. *Ibid.* Caus. XVII. Qu. IV. c. 3: Some who have given property to a church under a fervid impulse and not a lasting judgment afterwards wish to have it back. In their case neither the first nor the second gift is valid, the first because it was done thoughtlessly, the second because it was done sacrilegiously. Gregory *Ibid.* c. 4; Pseudo-Isidor. *Ibid.* Caus. XII. Qu. II. c. 5.

(147). Const. 1 Langton, A.D. 1222; Boniface, A.D. 1253, confirmed by 38 Hen. III. A.D. 1254, and 21 Boniface, A.D. 1261; Const. 3 Peckham, A.D. 1279, and Const. 10 Peckham, A.D. 1281; Const. Winchelsea, A.D. 1298; Const. 3 Mepham, A.D. 1328; Const. 1 Stratford, A.D. 1342; Const. 14 Stratford, A.D. 1343; Const. Chichele, A.D. 1430 and A.D. 1434; Ayliffe 85, 239.

(148). Concil. Tolet. III. A.D. 589, ap. Gratian. 1 Dist. LIV. c. 14; Concil. Tolet. IV. A.D. 633, Can. 64, *Ibid.* Caus. XVII. Qu. IV. c. 31; Gregory in Decret. Lib. V. Tit. VI. c. 18; Concil. Lat. IV. A.D. 1215, *Ibid.* c. 16.

(149). Apost. Const. VIII. 32; Concil. Ancyran. A.D. 314, Can. 24; Innocent ap. Gratian Caus. I. Qu. l. c. 24; Concil. Narbon. A.D. 589, Can. 14; Concil. Agath. A.D. 506, *Ibid.* Caus. XXVI. Qu. V. c. 6; Isidor. *Ibid.* c. 1 defines soothsaying, sortilegium, as the practice of divination by the lots of the saints or the inspection of writings. Concil. Aurel. I. A.D. 511, *Ibid.* c. 9; Concil. Martini A.D. 572, Can. 71; Gregory *Ibid.* c. 10; Leo IV. A.D. 850, to the English bishops, *Ibid.* c. 7; Alexander IV. in Sext. Lib. V. Tit. II. c. 8 directs inquisitors not to meddle with these subjects.

(150). Hieronym. ap. Gratian Caus. XXVI. Qu. II. c. 2 objects to casting lots, as was done in the case of Matthias, because "the privileges of individuals cannot make a common law." Also Augustin *Ibid.* c. 3, 5: Baeda *Ibid.* c. 4; Theodore in Decret. Lib. V. Tit. XXI. c. 1; Honorius III. *Ibid.* c. 3 declares an election void because lots had been cast.

(151). Apost. Const. VIII. 32; Augustin ap. Gratian Caus. XXVI. Qu. II. c. 8 calls star-gazers planetarios. Hieronym. *Ibid.* c. 9; *Id. Ibid.* Qu. III. c. 1 calls them astrologi and mathematici. Alexander III. in Decret. Lib. V. Tit. XXI. c. 2 suspends a priest for a year who had looked at an astrolabe with a view of recovering what had been stolen from a church.

(152). Διδαχή III. 4: Be not thou an observer of birds, for it leadeth to idolatry; nor a charmer, nor an astrologer, nor a user of purifications, for from these things is generated idolatry. The several kinds of divination by earth, air, fire, and water, the flight of birds, the inspection of entrails,

or unlucky days (153), practising magic, spells, incantations (154), sorcery (155), witchcraft, or the dark art (156), and worshipping fountains, stones, or dead bodies (157). This

the casting horoscopes, and dancing, are enumerated by Augustin ap. Gratian Caus. XXVI. Qu. III. c. 1 and Qu. V. c. 14, and condemned by Gregory II. A.D. 721, *Ibid.* Qu. V. c. 1 ; Concil. Autissiodor. A.D. 578, Can. 4.

(153). Augustin *Ibid.* Caus. XXVI. Qu. VII. c. 17 ; Concil. Martini A.D. 572, Can. 72.

(154). Concil. Laodic. A.D. 363, Can. 36 ; Augustin *Ibid.* c. 15 ; Iren. Haer. II. 32, 5 : Let priests teach men that magic and incantations cannot benefit infirmities. Stat. Eccl. Ant. *Ibid.* Qu. V. c. 11 ; Gregory *Ibid.* c. 8 ; Concil. Martini. A.D. 572, Can. 59 : Clergy may not practise enchantment and spells, because this is a binding of souls. Concil. Rothomag. A.D. 650, Can. 4.

(155). Cap. Reg. Franc. *Ibid.* Qu. V. c. 12.

(156). Concil. Tolet. XIII. A.D. 683, *Ibid.* c. 13 : Whatever priest or deacon under the influence of grief or resentment shall hereafter presume to strip the divine altar of its holy coverings, or surround it with any other gloomy covering, or even withdraw from the temple of God the accustomed service of holy lights, . . . let him know that he is deprived of the dignity and honour of his place. . . . For very many priests wounded with the fraud of hatred lay themselves out to say with deceitful intention a Mass appointed for the repose of the dead, for no other purpose but that he for whom the sacrifice is offered may by the intervention of the most holy libation incur the danger of death. Cnut's Law 5, A.D. 1018. We forbid all heathenism . . . or to practise witchcraft or to contrive any private murder, either by lots or by fear. Ethelstan's Law 3, A.D. 925 : Concerning witchcraft, magical medicines, and secret arts of murder, if one have been slain and the man cannot deny it let him forfeit his life.

(157). Augustin ap. Gratian Caus. XXVI. Qu. II. c. 6 ; Concil. Chelsea A.D. 787, Can. 19 ; Alfred and Guthrum's Law 2, A.D. 878 ; Egbert's Excerpt. 146–148 ; Concil. Tolet. XII. A.D. 681, Can. 11 ; Law's Northumbrian Priests, 47, 56, A.D. 950 ; Edgar's Law 16, A.D. 960 : That every priest forbid the worship of fountains, and witchcraft, and auguries, and spells, and soothsaying, and the worship of dead bodies and palmistry, which carry men into various impostures, and to groves, and ellens and many trees of divers sorts, and stones. Cnut's Law 5, A.D. 1018 : We strictly forbid all heathenism. It is heathenism to worship idols, *i.e.*, the heathen gods, the sun or moon, fire or river, water, wells, or tall stones [maen-hirs], or any kind of tree, or to practise witchcraft, or to contrive any private murder by lots or firebrands. Concil. London A.D. 1075, Can. 8 : That the bones of dead animals be not hung up to drive away pestilence from cattle. Concil. Westminster A.D. 1102, Can. 26 ; Concil. Winton A.D. 1308.

kind of sacrilege is visited with excommunication *ipso jure* (158).

### Crimes against Fellow-men.

22. On a very different level from crimes which are defections from allegiance to God are those which are invasions of other men's rights, or crimes against fellow-men. These include homicide, strife, and conspiracy, robbery, arson, and the crime of deceit and usury. Nearly all of these, as being offences against civil order (159), are in civilised communities punished in secular courts; but they also render those guilty of them liable to spiritual censures and penances (160), and in Christian countries the religious aspect of them has influenced to a large extent the view taken of them by civil tribunals.

23. Homicide consists in intentionally taking the life of another (161), or doing so unintentionally and accidentally, if the act was the result of carelessness (162) or of doing any

(158). Concil. Ancyran. A.D. 314, Can. 23 ap. Gratian Caus. XXVI. Qu. V. c. 2, punishes divination and sorcery with five years' excommunication. Theodor. Poenit. I. XV. 4 in Haddan and Stubbs III. 190; Concil. London A.D. 1076, Can. 8; Concil. London A.D. 1127, Can. 15; Clemens III. in Decret. Lib. V. Tit. XXXIX. c. 22 reserves this crime to the pope.

(159). Ayliffe 238.

(160). Concil. Aurel. IV. A.D. 541, Can. 28: Whoever has voluntarily murdered an innocent man, although he has obtained acquittance from the prince or the dead man's relatives, must remain liable to do penance at the bishop's hands. In such a case, according to Lucius III. in Decret. Lib. II. Tit. II. c. 8, and Bracton, a man may be twice tried and twice punished. 9 Ed. II. St. I. c. 6, A.D. 1315. Remigius ap. Gratian Caus. XXIII. Qu. V. c. 39, says that enormous crimes are better left to secular courts.

(161). Augustin ap. Gratian Caus. XXIII. Qu. VIII. c. 33; Caus. XXXIII. Qu. II. c. 819; Const. 7 and 9 Peckham, A.D. 1281; Const. 4 Thorsby, A.D. 1363; Decret. Lib. V. Tit. XII. c. 1; Lynd. 339.

(162). Concil. Elib. A.D. 305, Can. 5: If a woman in a fit of anger strike her maid so that she die within three days, it being uncertain whether it was intentional or accidental, let her do penance for seven years if it was intentional, or five years if it was accidental. Decret. Lib. V. Tit. XII. c. 7 and 12.

other criminal act (163). It includes aiding and abetting in murder (164), or not interposing when interposition might have prevented it (165), killing an adulterous wife (166), overlaying an infant (167), procuring abortion (168) or taking drugs for that purpose (169), self-murder (170), and spiritual murder (171). Closely allied to homicide is strife (172), and the crime to which it gives rise, conspiracy (173). It is, however, not homicide when an-

(163). Gratian I. Dist. 1. c. 47 ; Decret. Lib. v. Tit. XII. c. 8.

(164). Augustin ap. Gratian Caus. XXXIII. Qu. III. Dist. 1. c. 23 ; Hieronym. *Ibid.* c. 25.

(165). Ambros. *Ibid.* Caus. XXIII. Qu. III. c. 7 ; Augustin *Ibid.* c. 11.

(166). Augustin *Ibid.* Caus. XXXIII. Qu. II. c. 9 ; Nicolaus *Ibid.* c. 5.

(167). Dunstan Can. 52. A.D. 963 ; Const. 15 Edmund. A.D. 1236 ; Const. 2 Zouche, A.D. 1347 ; Const. 4 Thorsby, A.D. 1363.

(168). Διδαχή II. 2 ; Athenag. Apol. c. 35 ; Augustin ap. Gratian Caus. XXXII. Qu. II. c. 8, says, after quickening, not before. Concil. Ilerd. A.D. 523, Can. 2, excludes them from communion for seven years. Theodori Poenit. I. XIV. 24, in Haddan & Stubbs III. 189 ; Innocent III. in Decret. Lib. v. Tit. XII. c. 20 ; Tertullian Apol. c. 9 : In our case we may not even destroy the fœtus in the womb.

(169). Concil. Guarmarcia in Decret. Lib. v. Tit. XII. c. 5 ; Concil. Elib. A.D. 305, Can. 63, forbids communion to be given in extremis to an adulterous wife who had killed her offspring to conceal her liaison.

(170). Augustin ap. Gratian Caus. XXIII. Qu. v. c. 10 : Concil. Brac. I, A.D. 561, *Ibid.* c. 12.

(171). Augustin *Ibid.* Caus. XXII. Qu. v. c. 5, says that homicide of the soul is worse than homicide of the body. Concil. Tolet. VIII. A.D. 653, *Ibid.* Qu. IV. c. 1, speaks of "slaying a father's soul" (jugulare animam patris). Theodori Poenit. I. VIII. 5, *Ibid.* Caus. XXVI. Qu. VI. c. 12, and Haddan & Stubbs III. 184 ; I. IX. 7, *Ibid.* p. 185 ; I. XIV. 28, *Ibid.* p. 189, and Gratian III. Dist. IV. c. 22 ; Lynd. 58.

(172). Διδαχή III. 2 : Be not soon angry, nor given to party spirit nor contentions . . . for from all these are generated murders. Cyprian ap. Gratian I. Dist. XC. c. 3 ; Stat. Eccl. Ant. *Ibid.* c. 2, forbids the offerings of such to be received. Concil. Lat. II. A.D. 1139, *Ibid.* c. 11.

(173). Διδαχή II. 6 : Thou shalt not take evil counsel against thy neighbour. Concil. Chalcedon A.D. 451, Can. 18 ap Gratian Caus. XI. Qu. 1. c. 22 : If clergy or monks are found conspiring or banding together, or laying snares against their bishop or fellow-clergy, let them be deposed from their proper rank. Concil. Aurel III. A.D. 538, Can. 21, *Ibid.* c. 25 ; Concil. Narbon. A.D. 589, Can. 5, forbids concinnabula vel conjurationes clericorum sub patrocinio laicorum. Caus. III. Qu. IV. c. 4, 5 ; Decret. Lib. II.

other is accidentally killed, through no fault of the slayer's, whilst doing a lawful act (174), nor if he was killed by a dependent against his master's prohibition (175), nor if he was killed in lawful warfare (176), or by an official at the command of a superior (177), or in necessary self-defence (178), nor if a woman commits suicide to escape dishonour (179). The discipline awarded for homicide depends upon circumstances (180), and it is more leniently dealt with when committed by an avenger of blood or in anger than under other circumstances (181).

Tit. I. c. 19; 3 Ed. I. c. 28, and 13 Ed. I. St. 1. c. 49, forbid clerks committing maintenance of any matter pending in the King's court. Const. 1 Stratford, A.D. 1343; Const. 4 Thorsby, A.D. 1363; Lynd. 11, 254.

(174). Alexander III. to Bishop of Exeter in Decret. Lib. v. Tit. XII. c. 9; Innocent. III. *Ibid.* c. 13; Honorius III. to Archbishop of York, *Ibid.* c. 22 and 23. (1) If a schoolmaster chastises a pupil reasonably, and the pupil dies in consequence, *Ibid.* c. 7; (2) if a boy is killed by an ungovernable horse, *Ibid.* c. 13; or (3) by a dog known to be ferocious and let loose, but not if the dog has accidentally broken his chain; (4) by a mason accidentally dropping a stone or tile without calling out; (5) if a patient dies from a drug which it is the usual custom to administer. Clement III. in Decret. Lib. I. Tit. XIV. c 7; Craisson, § 1828.

(175). *Ibid.* Lib. v. Tit. XII. c. 17.

(176). Augustin ap. Gratian Caus. XXIII. Qu. v. c. 9; Hieronym. *Ibid.* c. 25, Qu. I.; Leo IV. *Ibid.* Qu. VIII. c. 9; Theodori Poenit. I. IV. 6, in Haddan & Stubbs III. 180: One who has killed another by order of his lord, let him keep from church for forty days; one who has done so in public warfare, let him do penance forty days. Urban II. ap. Gratian Caus. XXIII. Qu. v. c. 47; Soldiers' Penances, A.D. 1072.

(177). Innocent ap. Gratian Caus. XXIII. Qu. IV. c. 45, 46; Hieronym. *Ibid.* Qu. v. c. 31; Augustin *Ibid.* c. 41, and Qu. VIII. c. 33; Theodori Poenit. I. IV. 6 l. c.

(178). Decret. Lib v. Tit. XII. c. 2.

(179). Hieronym. ap. Gratian Caus. XXIII. Qu. IV. c. 11; Eusebius VIII. 12 and 14, commends a Christian woman for committing suicide to escape dishonour.

(180). Theodori Poenit. I. IV. 7, l. c. p. 180: If homicide is the result of anger, let him do penance three years; if of accident, one year; if effected by drugs or art, four years or more; if the result of strife, ten years. Gregory ap. Gratian Caus. XXIII. Qu. v. c. 7; Nicolaus *Ibid.* Caus. XXXIII. Qu. II. c. 15, prescribes twelve years for a matricide. Alexander III. to Bishop of Exeter, in Decret Lib. v. Tit. XII. c. 6.

(181). Theodori Poenit. I. IV. 1.

Clergy guilty of it, either directly or indirectly (182), are for ever after forbidden the exercise of their order (183). Strife and conspiracy are both visited with excommunication.

24. Robbery is of two kinds: (1) robbery with violence, and (2) larceny or stealing (184). Robbery with violence, and arson or incendiarism rank together as two of the most atrocious crimes against fellow-men (185), and as such may be punished anywhere, regardless of where they have been committed (186); and to those guilty of them Christian burial was formerly denied (187). Larceny is a less serious crime, but one who shares the proceeds of larceny is deemed as guilty as the thief (188); and because the earth is the Lord's and the fulness thereof, it is held to be venial larceny to take the necessaries of life to avoid starvation (189). A more lenient discipline is also imposed on those who make restitution after stealing (190)

(182). Innocent ap. Gratian Caus. XXIII. Qu. VIII. c. 2; Ambros. *Ibid.* c. 3; Concil. Tolet. IV. A.D. 633, *Ibid.* c. 5; Concil. Melden. A.D. 845, *Ibid.* c. 6; Lynd. 29.

(183). Concil. Ilerd. A.D. 523, Can. 1, says, if they have borne arms during a siege; Decret. Lib. V. Tit. XII. c. 10, 11, 18, 24, 25 names other cases; *Ibid.* c. 19, if death supervenes after performing a surgical operation; *Ibid.* Tit. XXV. c. 3 and 4, if they have been concerned in a *mêlee* in which any one has been killed.

(184). Lynd. 58 says that to invade another's right is a mortal sin; to defend one's own right is not a venial sin, p. 112.

(185). Eutychianus ap. Gratian Caus. XXIII. Qu. VIII. c. 31; Concil. Lat. II. A.D. 1139, *Ibid.* c. 32; Decret. Lib. V. Tit. XXXIX. c. 19, and Tit. XVII. c. 5; Const. 4 Thorsby, A.D. 1363; Lynd. 329.

(186). Concil. Lat. III. A.D. 1179, in Decret. Lib. V. Tit. XVII. c. 3.

(187). Eugenius III. and Alexander III. *Ibid.* c. 2 and 5.

(188). *Ibid.* Lib. V. Tit. XVIII. c. 4.

(189). Διδαχή I. 5: Woe to him that stealeth; for if, indeed, any one having need stealeth, he shall be guiltless; but he that hath not need shall give account. Augustin ap. Gratian I. Dist. VIII. c. 1; Decret. Lib. V. Tit. XVIII. c. 3: If any one pressed by hunger and nakedness has taken food or clothing, let him do penance three weeks, and if he make restitution, let him be excused fasting. Lynd. 58.

(190). Theodori Poenit. I. III. 3, in Haddan & Stubbs III. 179, quoted *Penance*, note 157; Augustin ap. Gratian Caus. XIV. Qu. V. c. 14 and 15; Gregory *Ibid.* Qu. VI. c. 3.

than to others, and a private thief who has made restitution is even allowed to be advanced to holy orders (191). To retain the property of another to satisfy a counter-claim which is made against him is not accounted stealing at all (192).

25. The crime of deceit (193) consists in stating what is false or concealing what is true (194), either in word or in writing. It includes (1) judicial perjury (195), or subornation of perjury (196), or attempted perjury (197) for the purpose of depriving another of his lawful rights (198); (2) defamation of the good (199), with which is closely allied the recommendation of the bad (200);

(191). Decret. Lib. v. Tit. xviii. 5.

(192). Iren. Haer. iv. 30, 2 on Exod. iii. 22.

(193). Διδαχή ii. 3: Thou shalt not forswear thyself, thou shalt not bear false witness, thou shalt not bear malice. Thou shalt not be double-minded nor double-tongued. . . . Thy speech shall not be false or vain, but filled by deed. Crimen falsi in Decret. Lib. v. Tit. xx.

(194). Augustin ap. Gratian Caus. xi. Qu. iii. c. 80, and Decret. Lib. v. Tit. xx. c. 1: Both are equally guilty, he who conceals the truth and he who utters a falsehood, because the one does not wish to do good and the other intends to do harm. Baeda *Ibid.* c. 83. Augustin *Ibid.* Caus. xxii. Qu. ii. c. 7 enumerates eight different kinds of falsehood. Hieronym. *Ibid.* c. 1; Lynd. 58, 59 defines lying as using words in a false sense with intent to deceive, 304 as knowingly and fraudulently saying what is false and concealing what is true. Ayliffe 419.

(195). Concil. Agath. A.D. 506, ap. Gratian i. Dist. l. c. 7; Isidor. *Ibid.* Caus. xxii. Qu. v. c. 9 says that it is a double crime—(1) taking God's name in vain, and (2) wronging a neighbour. Pseudo-Isidor. *Ibid.* Caus. vi. Qu. l. c. 18; Cap. 26 Theodulf, A.D. 994; Concil. Ebor. A.D. 1195, Can. 17; Const. 9 Peckham, A.D. 1281; Const. 4 Thorsby, A.D. 1363. Perjury may be said to include (1) renunciation of vows to God, apostasy; (2) breach of the same, sacrilege; (3) rash swearing, blasphemy; and (4) judicial perjury or false witness.

(196). Gelasius ap. Gratian Caus. xxii. Qu. v. c. 4; Augustin *Ibid.* c. 5; Concil. Matiscon. i. A.D. 581, Can. 17, *Ibid.* c. 7.

(197). Gregory *Ibid.* Qu. v. c. 18; Concil. Matiscon. Can. 17.

(198). Const. 6 Boniface, A.D. 1261; Const. 1 Langton, A.D. 1222; Lynd. 315.

(199). Syn. viii. A.D. 869, ap. Gratian Caus. xi. Qu. iii. c. 77; Const. 1, 21, 24 Langton, A.D. 1222; Const. 5 Boniface, A.D. 1261; Const. 3 Peckham, A.D. 1279; *Fletcher* v. *Harpur*, No. 51; *Jackson* v. *Hobday*, No. 54 in Rothery's Ecclesiastical Appeals.

(200). Const. 9 Peckham, A.D. 1281.

(3) falsification or forgery of instruments (201); and (4) falsely pretending to be in holy orders, or acting as one who is in holy orders without being so (202).

26. In the crime of deceit there are many degrees of criminality (203). Judicial perjury renders those guilty of it infamous (204), disqualifies them from acting as witnesses in future (205) or holding benefices (206), excludes from Christian burial (207), and is otherwise placed on a par with homicide (208). Defamation of the good stands on a level with sacrilege and violation of ecclesiastical liberties (209); forgery is treated like heresy (210); and falsely pretending to be in holy orders is visited with perpetual suspension (211). It is, however, excusable falsehood

(201). Concil. Agath. A.D. 506, ap. Gratian I. Dist. l. c. 7; Lucius III. to Bishop of Worcester in Decret. Lib. v. Tit. xx. c. 2 directs a sentence obtained by a forged instrument not to be ordered for execution. Innocent III. *Ibid.* c. 5 specifies nine ways of falsifying papal bulls. Const. 1 Reynolds, A.D. 1322; Const. 4 Thorsby, A.D. 1363; Lynd. 33.

(202). Decret. Lib. v. Tit. xxviii. c. 2; Const. 4 Thorsby, A.D. 1363.

(203). Augustin ap. Gratian Caus. xxii. Qu. ii. c. 12: There is a great difference with what mind or as to what things a lie is uttered. The sin is not so great when it is done to help another as when it is done to hurt another, nor is he equally guilty who misleads a traveller as he who misleads another in the way of life.

(204). Gratian Caus. iii. Qu. v. c. 9, and Caus. vi. Qu. vii. c. 17.

(205). Ethelstan's Law 7, A.D. 925: Let him that takes a false oath never be held worthy to swear afterwards. Eugenius III. to Bishop of Hereford in Decret. Lib. II. Tit. xx. c. 7, and Gregory IX. *Ibid.* c. 54.

(206). Lucius III. to Bishop of Norwich in Decret. Lib. II. Tit. xxiv. c. 11.

(207). Ethelstan's Law 7, A.D. 925.

(208). Concil. Agath. A.D. 506, Can. 37 ap. Gratian Caus. xxiv. Qu. iii. c. 20; Eutychianus *Ibid.* Caus. xxii. Qu. l. c. 17; Theodori Poenit. I. vi. in Haddan and Stubbs III. 182: Let him who commits perjury in a church do penance eleven years; he who does so under necessity, three Lents; he who commits perjury in the hand of bishop, priest, or deacon, or a consecrated cross, three years; if the cross was unconsecrated, one year.

(209). Const. 1 Langton, A.D. 1222.

(210). Innocent III. in Decret. Lib. v. Tit. xx. c. 7, decrees that all forgers of papal bulls, their aiders and abettors, be excommunicated, degraded, and delivered over to the secular arm, and all clergy using them be deprived of office and benefice. Const. 4 Thorsby, A.D. 1363.

(211). *Id. Ibid.*

to say what is false, believing it to be true at the time (212), or in jest (213), or when lawfully pledged to secrecy (214), or to a person not entitled to ask for information, when it is done to avoid a greater wrong (215).

27. Usury is the making unlawful profit out of a thing lent (216), and the crime of it consists in the covetousness which would take advantage of another's need to inflict on him loss for selfish gain (217). Forbidden usury, therefore, presupposes: (1) that the thing lent is not necessary to the lender as a means of livelihood, and is of less value to him than the amount asked from the borrower; (2) that the amount asked is not a payment to ensure the lender being in the same position when the thing lent is repaid as he was in before he lent it; and (3) that it is not a payment for some service rendered.

28. It is not usury to receive payment for the loan of that which is a means of livelihood to the lender, as rent for a farm, which in return produces a livelihood to him who pays the rent (218). It is not usury to receive repayment of a larger sum than that originally lent either, (1) to secure to the lender the same purchasing power if things are likely to increase in price (219), provided he do not make a profit out of the trans-

(212). Augustin ap. Gratian Caus. XXII. Qu. II. c. 3 and 4.

(213). Augustin *Ibid.* c. 18.

(214). See *Penance*, note 85.

(215). Hieronym. *Ibid.* c. 21.

(216). Alexander III. in Decret. Lib. v. Tit. XIX. c. 1.

(217). Eph. v. 5 calls covetousness idolatry. Col. III. 5, 6; Cyprian Ep. 51 (Oxf. 55), 27; Ambros. ap. Gratian I. Dist. XLVII. c. 8: When you came into the world, what did you bring with you? . . . Let no one call his own that which belongs to all. That which has been taken in excess of what would suffice has been violently taken. . . . It is not a less crime to take from him that hath than, having and abounding, to refuse to them that want. Augustin *Ibid.* Caus. XIV. Qu. IV. c. 11: Which is the more cruel, he who deprives and plunders the rich or he who oppresses the poor by usury? Labour, says Leo XIII.'s Encyclical, 1891, p. 13, 14, differs from any other commodity, because to-day's labour cannot be sold after to-day. To make one's profit out of the need of another is condemned by all laws, human and divine.

(218). Innocent III. in Decret. Lib. v. Tit. XIX. c. 16.

(219). Alexander III. *Ibid.* c. 6.

action (220); or (2) to compensate the lender for loss sustained by delay in repayment (221); or (3) to cover risk of loss altogether through the borrower's inability to repay (222). It is not usury to receive repayment of a larger sum than that lent when the excess is paid for some service rendered, such as taking care of an object left in pawn (223), changing money, or giving a bill of exchange (224). Neither is the purchase of perpetual rent-charges, or fee-farm rents (225), or life annuities forbidden usury (226).

29. To the Jews of old (227), and to Christians in early times (228), all usury was forbidden which exceeded the bounds of fraternal assistance, and to the clergy any and every kind of usury, because it savoured of the nature of trade (229). In

(220). Urban III. *Ibid.* c. 10.

(221). *Lucrum cessans.* To constitute a *lucrum cessans* three things are requisite according to Paul de Castro: (1) the money lent must not be useless to the lender, (2) he must be in a position to use it profitably, (3) he must have sustained actual loss by non-payment. A mortgage was therefore usually drawn repayable after six months, a stipulation being added that if the money were not then repaid the loss to the lender should be represented by an agreed sum yearly. Devoti Lib. IV. Tit. XVI. § 6–10.

(222). *Damnum eveniens.* Gregory IX. in Decret. Lib. V. Tit. XIX. c. 19 calls this presumptive usury (est censendus usuarius). Devoti l. c. § 11.

(223). *Commissoria lex.* Devoti, § 16, 17.

(224). *Ibid.* § 26.

(225). *Census.* Martin V. in Extrav. Com. Lib. III. Tit. V. c. 1. Devoti § 19.

(226). *Census vitalicius.* Concil. Vien. A.D. 1311, in Clem. Lib. III. Tit. IV., forbids monasteries to sell such annuities except for necessity or evident utility.

(227). Exod. XXII. 25; Deut. XXIII. 19; Lev. XXV. 36; Ps. XV. 5; Luke VI. 34, 35.

(228). Leo, A.D. 444, ap. Gratian Caus. XIV. Qu. IV. c. 7; Gregory *Ibid.* I. Dist. XXXIII. c. 2; Concil. Chelsea A.D. 787, Can. 20: We have also forbidden usury. Where there is gain there is loss; gain in the coffers, loss in the conscience. Const. 4 Thorsby, A.D. 1363; Lynd. 160.

(229). Can. Apost. Can. 44 ap. Gratian I Dist. XLVII. c. 1: Let a bishop, priest, or deacon who requires usury of those to whom he lends, either leave off or be deprived. Concil. Elib. A.D. 305, Can. 20, *Ibid.* c. 5; Concil. Nic. A.D. 325, Can. 17, *Ibid.* c. 2; Concil. Arelat. A.D. 314, *Ibid.* Caus. XIV.

mediaeval times this prohibition was extended to the laity, owing to the abuses and oppression connected with usury wherever it was practised (230); and it was provided by stringent laws that those guilty of it should be excommunicated and deprived of Christian burial unless they came to repentance (231), that they should be held infamous (232) and compelled to restore their unlawful gains (233), and the secular arm was invoked to compel them so to do (234).

### Crimes against Bodily Holiness and Redeemed Human Nature.

30. Crimes against the humanity redeemed by Christ are all carnal indulgences which offend against sobriety and bring dishonour on the body, and through it on the body of Christ (235),

Qu. IV. c. 1; Concil. Laodic. A.D. 363, *Ibid.* I. Dist. XLVI. c. 9: Ministers of the altar may not practise usury. Leo, A.D. 443, *Ibid.* c. 10, says, neither in their own names nor in the names of others. Concil. Carthag. III. A.D. 397, Can. 16, *Ibid.* Caus. XIV. Qu. IV. c. 6: Let no one of the clergy receive from any one more than he lent; if money, money; if kind, kind; what he gave that let him receive. Gelasius, A.D. 494, *Ibid.* c. 1; Concil. Tarracon. A.D. 516, Can. 2, *Ibid.* c. 3.

(230). In the twelfth century the usual charge is stated to have been 100 per cent. Const. 18 Edmund, A.D. 1236: We forbid a man to detain a pledge after he has received the principal out of the profits, after a deduction of expenses.

(231). Concil. Turon. A.D. 1163, in Decret. Lib. v. Tit. XIX. c. 1; Alexander III. to Archbishop of Canterbury, *Ibid.* c. 2; Concil. Lat. III. A.D. 1179, *Ibid.* c. 3; Sext. Lib. v. Tit. v. c. 1 and 2; Concil. Vien. A.D. 1311, in Clem. Lib. v. Tit. v. c. 1.

(232). Gratian Caus. III. Qu. VII. c. 2.

(233). Alexander III. in Decret. Lib. v. Tit. XIX. c. 5 and 9; Innocent III. *Ibid.* c. 13, 14; Concil. Lat. IV. A.D. 1215, Can. 67, *Ibid.* c. 18, extends this even to Jews.

(234). Innocent III. l. c. c. 12.

(235). 1 Thess. IV. 5; Διδαχή III. 3: Be not lustful, for lust leadeth to fornication, neither be a filthy talker nor a lifter up of the eyes, for from all these are generated adulteries. Hieronym. ap. Gratian Caus. XXVI. Qu. II. c. 9: He who is guilty of fornication sins against his own body, not that body only which has been made a temple of the Holy Ghost, but that which is also called the Body, because the whole Church is the Body

such as gluttony, drunkenness, and adultery in all its forms. Gluttony and drunkenness are the opposites of that abstemiousness in eating and drinking the climax of which is fasting. Adultery is used in a wide sense to express—(1) generally any illicit or forbidden intercourse between the sexes (236), and (2) specifically the violation of wedlock (237).

31. In a wide sense adultery includes (238) (1) any natural intercourse between the sexes which is not explicitly sanctioned by the Church, such as simple incontinence, concubinage, and promiscuous fornication; (2) any natural intercourse between those to whom it is forbidden by vows or divine law, such as the violation of wedlock, incest, or sacrilege; and (3) intercourse coupled with violence, or contrary to nature, such as rape, sodomy (239), and bestiality (240). The first of

of Christ, and he who defiles his body sins against the whole Church, because by means of one member the spot spreads over the whole.

(236). Apost. Const. VI. 28; Augustin ap. Gratian Caus. XXXII. Qu. IV. c. 11: Under the name of adultery must be understood all illicit intercourse, and the non-legitimate or forbidden use of those organs. Hieronym. *Ibid.* c. 14; *Id. Ibid.* Caus. XXXII. Qu. II. c. 2: Not all matrimony in which a wife is joined to a husband otherwise than according to the precepts of Christ can be properly called lawful wedlock, but rather adultery. Isidor. *Ibid.* Caus. XXXII. Qu. V. c. 15: Let no one outside the marital bond have intercourse with other women to gratify lust. Gregory *Ibid.* Qu. V. c. 13, says that adultery is committed when an unmarried girl is unlawfully desired. Lynd. 314.

(237). Pseudo-Gregory III.'s Poenit. Can. 4, in Wasserschleben, p. 538; Adultery is violating the wife of another or a consecrated virgin. Cap. 26 Theodulf, A.D. 994; Const. 10 Stratford, A.D. 1342; Const. 4 Thorsby, A.D. 1363; Lynd. 58.

(238). Augustin *Ibid.* c. 11: The evil of adultery surpasses fornication, and is surpassed by incest. For it is worse to have intercourse with a mother than with any other woman. But the worst of all is that which is contrary to nature. . . . In things allowed for use, an excessive use is far more tolerable than a single or rare giving way in a fashion that is not allowed.

(239). Devoti Lib. IV. Tit. XV.: Sodomia est conjunctio duarum personarum ejusdem sexûs, quae sodomia perfecta dicitur; eam vero proxime sequitur sodomia imperfecta quam admittunt duae personae dissimilis sexûs, quae corporum copulatione violarunt ordinem naturae. Rom. I. 26, 27; Augustin l. c. c. 11 and 13.

(240). Theodori Poenit. I. II. 3, in Haddan & Stubbs III. 178.

these are called excesses, the second crimes, the last monstrosities (241).

32. Simple incontinence is voluntary indulgence of sexual desires (242) between two persons who are under no disability to marry one another (243). Concubinage is a habit of such indulgence which stops short of wedlock to avoid the obligation of mutual fidelity (244). Promiscuous fornication (stuprum) is the degradation of the human body to promiscuous embraces for purposes of lust (245). Simple incontinence and concubinage are accounted lesser crimes (246), because they are strictly according to nature, and are visited with suspension for a year and doing penance during the forty days of Lent (247). Promiscuous fornication was formerly visited with suspension for ten or seven, but the time has been reduced to three years, because of human infirmity (248).

(241). Tertullian de Pud. c. 4: All other frenzies of passions impious both to the body and the sex beyond the laws of nature, we banish from all shelter of the Church, because they are not sins, but monstrosities.

(242). Greg. Nyss. Ep. Can. II. p. 118: *πορνεία ἐστὶν ἡ χωρὶς ἀδικίας ἑτέρου γενομένη τισὶ τῆς ἐπιθυμίας ἐκπλήρωσις.* Ambros. ap. Gratian Caus. XXXII. Qu. V. c. 2: There is no real corruption of the flesh unless there has first been a corruption of the mind. Augustin *Ibid.* c. 4–7; Chrysostom *Ibid.* c. 10, says fornication can be committed by the will alone.

(243). Tertullian de Pud. c. 4: Among us secret connections not first professed in presence of the Church run risk of being adjudged akin to adultery and fornication. Augustin l. c. c. 4, 5. See *Wedlock*, § 9.

(244). Apost. Can. 67: If any one has had connection with a virgin not betrothed and keeps her, let him be suspended [from offering]. Decret. Lib. V. Tit. XVI. c. 1: If a man lie with a maid, let him endow her and take her to wife.

(245). 1 Cor. VI. 15 defines the sin as making the members of a temple of the Holy Ghost the members of a harlot. Hieronym. ap. Gratian Caus. XXXII. Qu. V. c. 12.

(246). Alexander III. in Decret. Lib. II. Tit. l. c. 4.

(247). Theodori Poenit. I. II. 1, in H. and S. III. 178: Si quis fornicaverit eum virgine uno anno peniteat; si cum marita quatuor annos. I. XIV. 10, *Ibid.* p. 188. Baedae Poenit. III. 1, *Ibid.* p. 327: Adolescens si cum virgine peccaverit, annum unum poeniteat; si semel et fortuitu, levigetur etiam ad annum plenum.

(248). Theodori Poenit. I. II. 18, in H. and S. III. 179; Baedae Poenit. III. 27, *Ibid.* 328.

33. Any natural intercourse between those to whom marriage is forbidden is a greater crime ([249]), because it involves the violation of a vow or of some relation having the divine sanction. Such is adultery, which involves a breach of the marriage vow ([250]); incest, which is a violation of the family relation ([251]); sacrilegious incontinence, sometimes called incest, which involves the breach of a vow of chastity ([252]); and spiritual fornication, which is lewdness between persons spiritually related, as between a godparent and godchild ([253]), or an incumbent and a member of his flock ([254]). Adultery and sacrilegious inconti-

(249). Theodori Poenit. l. c. III. 178; Alexander III. in Decret. Lib. II. Tit. l. c. 4; Const. 10 Stratford, A.D. 1342; Lynd. 212.

(250). So defined by Cyprian Ep. 51 (Oxf. 55), 26; Augustin ap. Gratian Caus. XXXII. Qu. v. c. 16: He is an adulterer who, either when his wife is long ill, or long absent, or is desirous of living continently, has intercourse with another woman. Innocent *Ibid.* c. 23.

(251). Concil. Agath. A.D. 506, Can. 61: We call it incest if one take his brother's wife, who was almost the same as a sister, or if a brother take his wife's sister. If one wed his mother-in-law or first cousin (consobrina), or his maternal uncle's widow or daughter, or his paternal uncle's daughter or step-daughter, or has defiled one akin to himself or the wife of one akin. Concil. Paris. V. A.D. 615, Can. 14; Pseudo-Isidor. ap. Gratian Caus. III. Qu. IV. c. 4; *Ibid.* Caus. XXXIII. Qu. II. c. 17; Const. 17 Peckham, A.D. 1281; Decret. Lib. IV. Tit. XII.; Const. 4 Thorsby, A.D. 1363. See *Wedlock*, § 22.

(252). Hieronym. ap. Gratian I. Dist. XXVII. c. 9: Virgins who have married after they have been consecrated are guilty not so much of adultery as of incontinence. Siricius, A.D. 385, and Concil. Tribur. A.D. 895, *Ibid.* Caus. XXVII. Qu. l. c. 14: We hear that some have associated themselves to sacred virgins, and have entered into incestuous and sacrilegious relations with them after their making a solemn vow to God. See *Discipline of the Religious Life*, § 36; *Privileges of Order*, § 50.

(253). Gratian Caus. XXXIII. Qu. II. c. 18 mentions a man and his godmother. Caus. XXX. Qu. l. c. 8 a child and a godfather.

(254). Gratian Caus. XXX. Qu. l. c. 8: All whom we receive in penance are as much our spiritual children as those whom the water of baptism regenerates, either when held by us or dipped by us. Sylvester, therefore, admonishes every priest never to approach in fornication his penitential child. *Ibid.* c. 9: Let a priest know that if he has been guilty of incontinence with a spiritual daughter, he has committed grave adultery. *Ibid.* c. 10: Neither bishop nor priest ought to have intercourse with those who have confessed their sins to him.

nence were formerly visited with three and four years' exclusion from communion and severe penance (255), incest and spiritual fornication with seven years (256).

34. The greatest crimes of this class are rape and unnatural offences. Rape consists in forcibly abducting or criminally assaulting an innocent girl against her will without any arrangement of marriage (257). It is not, therefore, deemed to have been committed if both parties afterwards are prepared to marry one another (258). It is usually dealt with as a civil crime because of the assault (259), and in that case the ecclesiatical discipline is made lighter. Unnatural crimes (260) are visited with exclusion from communion for from seven to fifteen years, because of the horror and disgust they create (261), and are mostly punished by civil tribunals (262).

35. In early days the contracting of a second marriage was altogether forbidden by the Church. Under the relaxed rule of the fourth century second marriages were tolerated except among the clergy, as being according to nature but a concession to human infirmity, provided those who entered upon them

(255). Theodori Poenit. I. XIV. 9 and 11 in H. and S. III. 178. Baedae Poenit. III. 7, *Ibid.* p. 328, but Theodori Poenit. I. II. 1 says four years.

(256). Baedae Poenit. III. 9, 11, 17, 18, *Ibid.* 328.

(257). Gelasius, A.D. 494, ap. Gratian Caus. XXXVI. Qu. I. c. 2: Rape is said to be committed when a girl, without any arrangement of marriage, is violently carried off. Caus. III. Qu. IV. c. 4; Const. 16 Edmund, A.D. 1236: Const. 4 Thorsby, A.D. 1363.

(258). Lucius III. in Decret. Lib. V. Tit. XVII. c. 6.

(259). Alexander III. in Decret. Lib. V. Tit. XVII. c. 4, says that by leave of the prince spiritual judges may take cognisance of rape.

(260). Pseudo-Gregory III.'s Poenit. Can. 11 in Wasserschleben, p. 538: Incesti qui proprie illicitam commixtionem perpetrant.

(261). Ambros. ap. Gratian Caus. XXXII. Qu. VII. c. 12: Minus est secundum naturam coire quam adversus naturam delinquere. Theodori Poenit. I. II. 3–6 in H. and S. III. 178; Const. 16 Edmund, A.D. 1236.

(262). Remigius *Ibid.* Caus. XXIII. Qu. V. c. 39: There are some enormous crimes which are better judged by secular judges than by priests and governors of churches. . . . Princes of this world are principally constituted because of robbers, homicides, those guilty of rape. . . . Concil. Turon. III. A.D. 813, *Ibid.* c. 22, mentions incestuous persons, parricides, homicides as of civil cognisance.

underwent the discipline due to simple incontinence, and were suspended from communion for a time (263). By mediaeval rule clergy guilty of simple incontinence or concubinage who had not taken a vow of chastity were ordered to be suspended from office for forty days, and to undergo discipline in the bishop's discretion, after which they might be dispensed with, provided they had not intermeddled meanwhile with spiritual things (264). Such, however, as persisted in concubinage after being warned were ordered to be deprived (265); those guilty of adultery to be suspended for five or seven years (266); and those guilty of sacrilegious incest (267), spiritual fornication (268), or unnatural crime (269), to be imprisoned in a monastery for life. A pres-

(263). Apost. Const. 48: If a layman marries a second wife or a divorced woman, let him be suspended. Theodori Poenit. I. XIV. 2 in H. and S. III. 187: Digamus peniteat unum annum. See *Wedlock*, note 71.

(264). Concil. London A.D. 1108, Can. 9: Priests who choose to leave their women and to serve God and His holy altars shall have vicars to officiate for them during the forty days in which they are to desist from their office, and are to have penance enjoined them at the bishop's discretion. Concil. Lat. IV. A.D. 1215, Can. 14 in Decret. Lib. III. Tit. 1. c. 13; Const. 3 Edmund, A.D. 1236; Const. 16 Otho, A.D. 1237: That those in holy orders keeping concubines do wholly discard them within a month. Const. 8 Othobon, A.D. 1268. See *Privileges of Order*, § 13.

(265). Alexander II. A.D. 1065 ap. Gratian I. Dist. LXXXI. c. 16: Should any bishop, priest, or deacon hereafter take a woman or keep one, let him be deprived till he come to satisfaction, and neither remain in the choir of singers nor receive any portion from the things of the Church. Concil. London A.D. 1175, Can. 1: If a priest publicly keeps a concubine and does not dismiss her upon a third admonition, let him be deprived. Concil. Lat. III. A.D. 1179, Can. 11 in Decret. Lib. V. Tit. XXXI. c. 4; Concil. Westminster A.D. 1200, Can. 10; Const. 31 Langton, A.D. 1222: Let clergymen [keeping concubines] after admonition be restrained by subtraction of their benefice. Const. 5 Peckham, A.D. 1279, directs the reading of Othobon's Constitution to be looked upon as a monition. Lynd. 10.

(266). Concil. Aurel. III. A.D. 538, Can. 7 ap. Gratian I. Dist. LXXXI. c. 10 prescribes imprisonment in a monastery for life; but Isidor. *Ibid.* Caus. XXXIII. Qu. II. c. 11, and Decret. Lib. V. Tit. XVI. c. 5 are more lenient.

(267). Concil. Aurel. III. A.D. 538, Can. 16.

(268). Gratian Caus. XXX. Qu. 1. c. 9.

(269). Concil. Elib. A.D. 305, Can. 7; Concil. Tolet. XVI. A.D. 691, Can.

byter accidentally guilty of drunkenness is ordered to be suspended for thirty days (270), and an habitual drunkard till he comes to satisfaction (271); a layman for a shorter time, according to circumstances (272).

### Excesses peculiar to Special Positions in the Church.

36. In addition to the above, there are excesses peculiar to particular ranks in the Church, the criminality of which consists in their being violations of specially undertaken obligations, or of disciplinary rules made by competent authority for those to whom they apply (273). From the clergy the Church expects obedience to all her laws (274), unless the same are dispensed with by local custom (275), and to them many things are forbidden which are tolerated in other Christians, who are

3, forbids those guilty of such offences to receive communion even at the hour of death. Concil. Westminster A.D. 1102, Can. 28 : Profligate obstinate sodomites were struck with anathema till by confession and penance they deserve absolution. If any ecclesiastical person be guilty of this crime, let him never be admitted to any higher order, and be degraded from that he holds. Theodori Poenit. I. II. in Haddan and Stubbs III. 178; Concil. Lat. III. A.D. 1179 in Decret. Lib. V. Tit. XXXI. c. 4; Const. 4 Thorsby, A.D. 1363.

(270). Concil. Agath. A.D. 506, Can. 41, prescribes either corporal punishment or thirty days' suspension. Const. 6 Edmund, A.D. 1236, forbids drinking bouts. See *Privileges of Order*, note 57.

(271). Apost. Can. 42 : Let a bishop, presbyter, or deacon who indulges in dice or drinking either leave off or be deprived. Theodori Poenit. I. I. 1 in H. and S. III. 177 : If a bishop or any one in orders is an habitual drunkard, either let him desist or be deposed from his place. Baedae Poenit. VI. 1, *Ibid.* 331 : He who vomits from drunkenness, if a presbyter or deacon, [let him do penance] for forty days, a monk for thirty, a layman for twelve. Concil. Lat. IV. A.D. 1215, in Decret. Lib. III. Tit. 1. c. 14.

(272). Theodori Poenit. I. I. 5 in H. and S. III. 177; Baedae Poenit. *Ibid.* p. 331.

(273). Cyprian, Testimonies against the Jews, III. 66 : The discipline of God is to be observed in Church precepts.

(274). Egbert's Excerpt.; Const. 12 Wethershed, A.D. 1229 : Such as disobey are called transgressors. Lynd. 38, 316, 330.

(275). Augustin ap. Gratian Caus. XXXII. Qu. IV. c. 7 : Jacob had four wives, but because it was the custom it was not a crime.

not such by choice but by early initiation. Elsewhere their special duties have been set forth (276), any violation of which is accounted an excess. Clergy are also enjoined, under pain of deposition, not to plot or conspire against brother-clergy (277); not to disobey their bishop (278), save when he wantonly (279) invades a right (280); not to expose his wrong-doing before the world (281); and to respect ecclesiastical sentences, even when unjust (282).

37. Among excesses which are accounted particularly criminous for clergy may be mentioned bigamy (283), suing for spiritual matters before secular judges (284), contu-

(276). *Duties of Order*, § 10.

(277). See above, § 23.

(278). See *Ordinaries.*

(279). Gratian Caus. XV. Qu. 1. c. 2; Lynd. 263: The presumption is in favour of a judge unless the contrary is shown; but Lynd. 345: Malice is presumed unless a just cause appears. *Id.* 15, 76.

(280). Concil. Aurel. A.D. 511, ap. Gratian Caus. II. Qu. VII. c. 20: Should any one think to reclaim anything from his bishop, either in right of his Church or of his own right, let him not be removed from communion simply for convening him, so that he do not charge him with wrong-doing or crime. Decret. Lib. I. Tit. XXXIII. c. 8, and Lib. V. Tit. XXXI. c. 5.

(281). Apost. Const. II. 31: He that casts reproach on his bishop by word or deed opposes God, not considering what He saith, Thou shalt not speak evil of the gods [Exod. XXII. 28]. Theodori Poenit. II. II. 9, in Haddan and Stubbs III. 191: A priest may not expose the wrong-doing of his bishop, because the bishop is over him. See last note.

(282). Concil. Antioch. A.D. 341, ap. Gratian Caus. XI. Qu. III. c. 6: If a bishop condemned by a synod, or a priest or deacon by his bishop, intermeddle with his ministry . . . let him never hope for restitution, or have opportunity of satisfaction in any other synod. Chrysost. *Ibid.* c. 30 and 31; Gregory *Ibid.* I. Dist. CI. c. 8; Alexander III. in Decret. Lib. II. Tit. XIV c. 2; Innocent III. *Ibid.* c. 6.

(283). Bigamy includes (1) marrying more than one wife, either successively or cotemporaneously, and (2) marrying a widow, a divorced, or a defiled woman. Apost. Const. III. 2; Elfric's Can. 9, A.D. 957. See *Order*, § 47.

(284). In addition to the authorities quoted, *Duties of Order*, note 12, may be added Concil. Arelat. II. A.D. 443, Can. 31: If any clergyman presume to bring spiritual matters before secular judges, leaving the synod, let him be excommunicated by all. Concil. Autissiodor. A.D. 578, Can. 35; Concil.

macy ([285]), obtaining orders improperly, as by stealth, at a bound, out of the Embertides, when excommunicate, or for the second time ([286]), and neglecting clerical studies whilst holding a cure of souls ([287]). Should they be found to have offended in any of these matters, they should be visited with discipline regularly in consistory ([288]).

Tolet. III. A.D. 589 Can. 13 in Labbé VI. 700 ; Concil. Paris V. A.D. 675, Can. 3, *Ibid.* VI. 1389 ; Concil. Cabilon. A.D. 649, Can. 11, *Ibid.* VII. 397 ; Pseudo-Isidor. ap. Gratian Caus. XI. Qu. 1. c. 10, 13, 14 ; Law 5, North-umbrian Priests, A.D. 950 ; Honorius III. in Decret. Lib. V. Tit. XXXI. c. 15, orders an archdeacon to be excommunicated for having, contrary to his oath of homage, and in violation of due reverence, raised a question with his bishop, touching a spiritual matter, in a court of law. Const. 1 and 5 Boniface, A.D. 1261 : Even the writ called *juris utrum*, for trying the validity of an alienation of ecclesiastical property, did not issue in this country before the statutes 13 Ed. I. St. I. c. 24, A.D. 1285, and 14 Ed. III. St. I. c. 17, A.D. 1340 ; Const. 12 Stratford, A.D. 1343. For the cases in which a temporal court may be appealed to, see *Ordinaries.* Lynd. 93, 261, 146.

(285). Apost. Can. 29 : If any bishop, or presbyter, or deacon, who is deprived justly for manifest crimes, does venture to meddle with that ministration which was once entrusted to him, let the same person be entirely cut off from the Church. Concil. Lat. IV. Can. 14, A.D. 1215, in Decret. Lib. III. Tit. 1. c. 13, reproduced in Const. 3 Edmund, A.D. 1236 : Those who, being suspended, do yet presume to officiate, are ordered not only to be deprived of their benefices, but to be for ever deposed for their double crime. Concil. Agath. A.D. 506, ap. Gratian I. Dist. 1. c. 21. See chapter on *Ordinaries.* Const. 4 Boniface, A.D. 1261, says that contumacy is either simple or pregnant, and that simple contumacy merits excommunication. Const. 4 Thorsby mentions—(1) officiating whilst suspended, (2) whilst excommunicate, (3) communicating in crime with one excommunicate, (4) communicating with an excommunicate in divinis as instances of contumacy.

(286). Const. 4 Thorsby, A.D. 1363. *Havers* v. *Bp. of London*, No. 69 in Rothery's Report. See *Order*, § 40.

(287). Const. 4 Thorsby, A.D. 1363 ; Decret. Lib. III. Tit. L.

(288). Innocent ap. Gratian I. Dist. LXXXI. c. 6 : Those priests who are said to have done such things you shall order to be summoned before all (in medio collocari), and upon hearing the charges made against them, if they are found guilty, to be removed from clerical office. Stat. Eccl. Ant. A.D. 505, *Ibid.* I. Dist. XC. c. 1 : Let the bishop reduce discordant clergy to reason, and the synod condemn the disobedient.

# III.

# DISCIPLINE OF THE RELIGIOUS LIFE.

## The Religious Life.

1. The religious life has been defined to be "a systematised form of life according to the Gospel counsels, existing for its own sake, as a full expression of the Church's true and perfect life" (1). By early writers it was spoken of as "the angelic life," the heavenly citizenship, the apostolic life, the highest or the divine philosophy (2). Of it there are three varieties, viz. (1) the religious life in isolation, (2) the religious life in association, and (3) the religious life in common (3). The discipline of the religious life is the discipline imposed by rule on those who have embraced any one of these three forms.

2. Previously to the third century the religious life was chiefly pursued by isolated effort. Those who looked upon this world and the next as enemies (4) withdrew from their surroundings to cultivate asceticism in solitude (5), and for so doing the Church honoured them highly (6). Paul of Thebes.

(1). Gasquet, in Introduction to Montalembert's Monks of the West; Concil. Aurel. I. A.D. 511, Can. 11; Concil. Paris V. A.D. 615, Can. 13; Concil. Tolet. IV. A.D. 633, Can. 55; Concil. Tolet. X. A.D. 656, Can. 6; Const. 21 Peckham, A.D. 1281: The name of religious is by us appropriated to the monastic life.

(2). Epiphan. Haer. LXI. 4 calls it *ὁ τῶν ἀγγέλων βίος. τὰ οὐράνια πολιτεύματα. ἀποστολικὸς βίος.* Gregor. Nyss. Orat. Catech. c. 18: *ἡ ὑψηλὴ φιλοσοφία ἔργῳ μᾶλλον ἢ λόγῳ κατορθουμένη.* Nilus de Monast. Exercit. c. 8: *ἡ κατὰ θεὸν φιλοσοφία.*

(3). Isidor. de Orig. Offic. 16, 3: There are three kinds of monks—[1] anchorites (*i.e.*, solitaries), [2] eremites (desert-dwellers in associations), and [3] coenobites (those leading a common life).

(4). Clem. 2 Ep. ad Rom. c. 6.

(5). Devoti Inst. Lib. I. Tit. IX. § 2. See note 10.

(6). Apost. Const. VIII. 13 directs the ascetics to be communicated after the singers and before the deaconesses. Socrates VII. 17 relates that the

in the Decian persecution, and Antony in the following century, are usually spoken of as the pioneers of solitary asceticism (7), but it had its votaries before among those less known to fame (8). In the pillar-saints of the fifth century it received its extreme development. Those who supported themselves whilst leading it were generally called *anchorites* (9) or *monks* (10), those whom others supported, *recluses*. In mediaeval times in the West none were allowed to become recluses without the bishop's or abbot's permission (11).

3. Religious life in association is said to have been introduced in the fourth century, in the Thebaid, by St. Pachomius (12)

Novatians made Paul the ascetic their bishop. See Chrysostom, Against the Opponents of Monastic Life, II. 4.

(7). Hieronym. Ep. 22 ad Eustoch. c. 36, calls Paul the founder, and Antony the illustrator, of anchorite life. Socrates I. 21. Paul died A.D. 340.

(8). Curzon, Monasteries of the East, relates that Fronto, with seventy brethren, is said to have retired to the villages on the natron lakes about 150 A.D. Simeon Stylites stood on a pillar in the neighbourhood of Antioch from A.D. 420 for more than forty years.

(9). ἀνωχωρῆται = retirers.

(10). An unknown author ap. Gratian Caus. XVI. Qu. I. c. 8 : Let a monk know his name, for μόνος is Greek for *alone* (unus), and ἄχος is Greek for *sad* (tristis). Monk he is called because he is solitary and sad. Hieronym. *Ibid.* c. 5 : If you wish to be what you are called, a monk, *i.e.*, a solitary one (solus), what are you doing in cities, which are not abodes of solitary ones, but of crowds?

(11). Concil. Venet. A.D. 465, Can. 7, forbids a monk to withdraw to a solitary cell without the abbot's leave. Concil. Agath. A.D. 506, Can. 58 ap. Gratian Caus. XVIII. Qu. II. c. 13 : We forbid new hermitages (cellulas) or small congregations of monks to be established without the bishop's knowledge. Concil. Aurel. I. A.D. 511, Can. 24, *Ibid.* c. 14 : Let no monk leaving the congregation of the monastery presume to erect a hermitage for purposes of ambition and vain-glory, without the bishop's permission and the will of the abbot. Bridgett's Hist. of the Eucharist, II. 181, gives a graphic account of the walling up of a recluse. Const. 31 Edmund, A.D. 1236, forbids men or women to be made close recluses without the bishop's license. Const. 9 Mepham, A.D. 1330 ; Lynd. 269.

(12). Pachomius, born 292, established, in A.D. 325, on the island of Tabennae, in the Nile, in Upper Egypt, a society, κοινόβιον, μάνδρα, or claustrum, which at the time of his death consisted of eight or nine mona-

and St. Macarius (13), and by St. Basil in Pontus and Cappadocia (14). Those who adopted it were called *hermits* (15). In that and the following centuries, notwithstanding the measures taken by the Emperor Valens to restrain it (16), the deserts of Egypt and Nitria swarmed with societies of associated hermits. As St. Basil is often spoken of as the founder of associated asceticism in the East, so St. Athanasius is in the West (17). St. Ambrose established a monastery at Milan (18). At the same time convents for both sexes were founded in Rome, notwithstanding the ill-will of the people (19). The small

steries, and contained 5000 monks, according to Sozomen III. 14, and a century later, 50,000. Socrates IV. 23, gives a list of holy monks. On the ground stated by Cassian de Inst. Coenob. X. 23, that "a working monk is plagued by one devil, whereas an idle one is torn to pieces by innumerable evil spirits," St. Pachomius' monks united agriculture, boat-building, basket-making, and mat-weaving with their spiritual exercises, and not only supported themselves thereby, but also the poor and the sick. They were divided into twenty-four classes, named after the letters of the alphabet, lived three in a cell, ate in common, kept strict silence, with the face covered, and made known their wants by signs.

(13). Macarius of Alexandria, chief of the recluses of Nitria, where were afterwards fifty monasteries (Sozomen VI. 37), retired into the Thebaid A.D. 335, established himself in the desert of Scetis A.D. 373, and died A.D. 394.

(14). St. Basil, born in 328 A.D., established a monastery at Pontus, 358, and was elected Bishop of Caesarea A.D. 370. His improved rule was accepted by 80,000 monks before his death in 379, and was translated by Rufinus for Western use.

(15). ἐρημῖται, from ἔρημος = desert-dwellers.

(16). Cod. Theodos. XII. I. 63 A.D. 365 : Some partisans of idleness, leaving the duties of the community, take to solitudes and secret places, and, under pretence of the religious life, associate themselves with troops of Amazons. These and all such, when caught in Egypt, we have ordered to be ferreted out from their hiding-places by the Governor of the East, and to be compelled to discharge their duties towards their country.

(17). He introduced it in 340 A.D., when exiled.

(18). Augustin Confess. VIII. c. 6 : There was a monastery at Milan, full of good brethren, outside the walls of the city, under Ambrose as its supporter. *Id.* de Moribus Eccles. Cath. I. 33 : I have seen a place of entertainment for the saints at Milan, in number not a few, over whom one presbyter presided, a most excellent and learned man. Ambrose Ep. 5, 19.

(19). Hieronym. Ep. 96 de Laudibus Marcellae, A.D. 412 ; *Id.* Epist. 54

islands on the west coast of Italy (20), and the islands on the Dalmatian coast (21), became important monastic seats. St. Martin first established in Gaul a monastery at Poitou (22), and afterwards, when he became Bishop of Tours, another in that city (23). Honoratus founded the celebrated monastery on the island of Lerina, now St. Honorat, about the year 400 A.D. (24). Others rose on the island of Lero or St. Marguerite, and the Stoechades on the south coast of France. John Cassian, who was educated among the Egyptian monks, founded two at Marseilles about 414 A.D. (25). Monasteries of hermits appear to have been numerous in the early Welsh, Irish, and Scottish Churches before they came under the influence of St. Benedict (26), the most celebrated being the two Bangor monasteries in Wales (27), and the Irish Bangor on the southern shore of the Belfast Lough.

ad Pammachium, A.D. 398 ; Augustin de Mor. Eccl. Cath. I. 33, A.D. 388 : I know of many places of entertainment for saints at Rome . . . where, not to be burdensome to any one, after the Eastern fashion and St. Paul's precept, they labour with their hands. I understand they practise almost incredible fastings, not refreshing the body once a day at nightfall, as is the most common custom, but going for three days or more without food or drink. Hieronym. Ep. 22 (al. 25) ad Paulam, relates that at the burying of a young nun supposed to have died of over-fasting, Blaesilla, a daughter of Paula, the people cried out, How long shall this detestable race of monks go without being expelled from the city ? Why are they not stoned or drowned ?

(20). Ambrose Hexaemeron III. c. 5 ; Hieronym. Ep. 84 (al. 30) de Morte Fabiolae, A.D. 400. Such were Gallinaria, now Galinara ; Gorgon, now Gorgona ; Capraria, now Capraia ; Palmaria, now Palmarola.

(21). Hieronym. Ep. 92 ad Julianum : You build monasteries, and a vast number of the saints are supported by you in the islands of Dalmatia.

(22). Monasterium Locociagense. See Severi Sulpicii Vita Martini and Gregory of Tours de Miraculis St. Martin IV. 30

(23). Majus Monasterium, corrupted into Marmoutier.

(24). Acta Sanctorum ad 16 Jan. Pliny, Nat. Hist. III. 5, calls the island Lerina, and the other island Lero. Sidonius, Carm. XVI. 104, calls it Lerinus, whence it is often abbreviated into Lerins.

(25). Cassian de Inst. Coenob. II. c. 2. He died after 432 A.D.

(26). Baeda II. 2 ; Haddan and Stubbs I. 122, and II. 142.

(27). Warren Leofric Missal IX. says that Bangor Fawr or Bangor

4. Already in the fifth century the irregular monastic life as then observed was becoming discredited, and the wandering of monks from place to place was condemned by conciliar authority ([28]). In this country wandering was also discountenanced in the seventh century ([29]). Monasteries were then founded in which the monks led a common life. One of the most celebrated of these monasteries was that of the Sleepless (*ἀκοίμητοι*), founded at Constantinople by Studius in the year 460 A.D. ([30]). Throughout the West the rule of St. Basil gradually made way for the rule of St. Benedict, and religious life in common took the place of religious life in association. The rule of St. Basil continued to have adherents in some parts of Spain, Italy, Germany, and Sarmatia, but in this country only a few isolated societies of women survived the tenth century.

5. The extension of religious life in common, after the fashion of the early Church of Jerusalem, to the clergy, is usually referred to Eusebius of Vercellae, about 365 A.D., who required his clergy to live together under a common roof ([31]). His

Deiniol, in Carnarvonshire, was founded by Bishop Deiniol, circa 510 A.D. ; Bangor Iscoed, in the valley of the Dee, in Flintshire, was founded somewhat earlier by Dunawd, father of Bishop Deiniol.

(28). Augustin de Opere Monach. c. 28, complains of monks wandering about from sheer love of idleness. Sozomen I. 12. *Id.* VI. 33, says that wandering monks were called *βόσκοι*, also Evagrius I. 21. See note 38. Concil. Chalcedon A.D. 451, Can. 23, forbids wandering ; also Pelagius ap. Gratian Caus. XVI. Qu. 1. c. 18. Justinian c. 51, C. de Epis. et Cler. *Ibid.* c. 40 : Those monks shall enjoy the privilege of exemption who continue to dwell in monasteries, not those who wander about (*divagantes*).

(29). Wihtraed's Law 7, A.D. 693, in Haddan and Stubbs III. 234 : If a shorn man [= a monk] go wandering about for hospitality, let it be given him once ; and unless he have leave let it not be that any one entertain him longer.

(30). Nicephor, Hist. Eccl. XV. 23.

(31). Ambros. Ep. 63 ad Vercellenses, § 66 : In the West, Eusebius of holy memory first combined these two distinct things ; living in the city he clung to the regulation of monks, and governed the Church with the sobriety of fasting. Maximus, Bishop of Turin, circa 422 A.D., Serm. IX. de Eusebio in Muratorii Anecdot. Tom. iv. p. 88 : That he might exhibit himself to all his clergy as a heavenly mirror of spiritual institutions,

example was followed by St. Augustin of Hippo, whence a clergy-house was often called a monastery (32). The practice was introduced among the Franks by Chrodegang, Bishop of Metz, in the eighth century, and an improved rule drawn up for such communities by Amalarius was sanctioned by the Council of Aix, in 816 A.D. (33); but vows appear not to have been taken by clergy living in community before the eleventh century (34). Those who then took them were called regulars and Augustinian canons, because the rule they observed was based on the directions given by St. Augustine in his letter *ad sanctimoniales* (35).

6. In the eleventh century two well-established varieties of coenobites are found existing in the Western Church, viz. (1) lay-cœnobites, generally called *monks*, who followed simply or with additions the rule either of St. Benedict or St. Basil, and (2) clerical coenobites or *canons regular*, who followed the rule of St. Augustin (36). Each of these rules had communities of

he gathered them all together under the enclosure of one roof, that they whose religious vow was one and undivided might lead a common life, and have a common table. Concil. Turon. II. A.D. 567, Can. 14, requires clergy and monks to have a common school and dormitory. Lingard's Anglo-Saxon Church, I. 150.

(32). Ambros. Serm. 355, Possidio Vit. Augustini, c. 5: Having been ordained presbyter, he quickly erected a clergy-house (monasterium) within the Church precincts, *Ibid.* c. 11; Augustin Sermones duo de Moribus Clericorum. Hieronym. ap. Gratian Caus. XII. Qu. I. c. 5 and 7; Gregory *Ibid.* c. 8, say that clergy [*i.e.*, regular clergy] may possess nothing. Hist. Monast. de Abbendon II. 28, calls a country rectory monasterium.

(33). See *The Diocese.* Concil. Ensham A.D. 1009, Can. 1, requires canons to have a common dormitory and refectory. Const. 44 Langton, A.D. 1222, does the same.

(34). Warren's Leofric Missal, p. xxvi.; Haddan and Stubbs III. 461, say that "the first use of the word *canonici* in the sense of canons living in community, but without monastic vows, that occurs in English history" is in the legatine synod of Chelsea, A.D. 787.

(35). Ep. 109. See Augustin ap. Gratian Caus. XII. Qu. I. c. 10, 11.

(36). Const. 40 Langton, A.D. 1222: That monks, canons regular, and nuns eat in one refectory. Concil. Educ. ap. Gratian Caus. XIX. Qu. III. c. 1, forbids monks to draw off canons regular from their own rule to monasticism. See *Religious Orders*, § 8.

women as well as of men (37). The professed members of a lay-society were called cloistered *monks* or *minikins*, and were restricted to the cloister-walls (38), those of a clerical society *canons regular* or *canonesses*. Nunneries where minikins dwelt were directed to be placed under the protection of monasteries (39), but at some distance from them, because of the wiles of the devil and the tongues of men (40). In many places there existed double monasteries (41), and in this country some monasteries were under a lady-abbess (42).

7. As the northern nations for the most part first became acquainted with Christianity through the teaching of monastic missionaries, so the common form of the religious life was the one which commended itself most to their sympathies, besides being in itself best adapted to a northern climate and the prevailing system of agriculture. Under the conviction of its truth, thousands of men and women—the noblest, the wisest, the best, and the most cultured—turned their backs on the world, overcame

(37). Concil. Lat. II. A.D. 1139, Can. 26 ap. Gratian Caus. XVIII. Qu. II. c. 25 : We desire that the pernicious and detestable custom of certain women be abolished who desire to be looked upon as minikins, although they conform neither to the rule of St. Basil, Benedict, or Augustin. Lynd. 213.

(38). Alexander II. ap. Gratian Caus. XVI. Qu. 1. c. 11 ; Concil. Ebor. A.D. 1195, Can. 14 : That all opportunity of wandering may be taken away, we forbid [monks, canons regular, and nuns] to take to farm *Obediences*, or to take long travels, or go out of their monasteries without some certain reasonable cause. Can. 15 : That nuns do not go out of the verge of their monastery but in the company of their abbess or prioress.

(39). Concil. Hispal. II. A.D. 619, Can. 11 ap. Gratian Caus. XVIII. Qu. II. c. 24.

(40). Concil. Agath. A.D. 506, Can. 28, *Ibid.* c. 23. Concil. Augustodun. A.D. 670, Can. 10. Baeda IV. 25, relates the disgrace of the nuns of Coldingham, A.D. 684, which called forth canons of Clovesho, A.D. 747.

(41). Double monasteries existed at Whitby, Wimborne, Barking (Baeda IV. 7) and Coldingham. See notes 81, 216, 254.

(42). Theodori Poenit. II. VII. 8, in Haddan and Stubbs III. 195, condemns but tolerates the practice. Syn. VII. A.D. 787, Can. 20 ap. Gratian Caus. XVIII. Qu. II. c. 21, also condemns it. Lingard's Anglo-Saxon Church I. 212, 227. Nevertheless double monasteries were not unknown in this country in later foundations. See *Religious Orders*, § 11.

the fervid impulses of youth, and abandoned all that seemed fairest and most attractive in life, in order to present themselves to God a living sacrifice, and to serve Him with undistracted mind. Can it be wondered at that, when in the sixteenth century the monasteries were blackened by the calumnies of sacrilege and oppression, the religious life of the people was for a time brought to a standstill?

### Gilds, Confraternities, Societies, Congregations.

8. The simplest form of voluntary association for a united purpose is that of a religious gild or confraternity. A religious *gild* has been defined to be an association of Christians directed by spiritual authority, having for its object the performance of some special work of piety or philanthropy (43). It is distinguished from a confraternity in that a gild aims at fulfilling something more than the minimum of Christian duty by a simple promise or vow to do some particular works of piety (44), whereas a *confraternity* is an association in which the whole life is devoted to some religious or philanthropic work, and

(43). Theodorus a Spiritu Sancto Pars. II. c. II. art. 2 § 1 : Confraternitates fidelium sunt congregationes in unum quandoque convenientium ad quaedam pietatis officia obeunda, ecclesiastica auctoritate institutae. See Béringer, Les Indulgences, 1890, vol. II. p. 2. Craisson, § 4654, says : Fidelium congregationes ad exercenda pia opera auctoritate ecclesiastica institutae. Hatch, Bampton Lectures, p. 26, traces the origin of the Church to a series of gilds whose essential feature was poverty. *Ibid.* 35.

(44). Toulmin Smith, in his Introduction to English Gilds (Early English Text Society, No. 40) : "The gilds were lay bodies, and existed for lay purposes, and the better to enable those who belong to them rightly and understandingly to fulfil their neighbourly duties as freemen in a free state." The Cambridge gild in Kemble's Saxons I. 513 recites : In this writ is the notification which the brotherhood hath made at the thanes' gild of Grantabyrig. That is, that each give oath upon the relics to the rest that he would hold true brotherhood for God and for the world, and all the brotherhood to support him that hath the best right. If any gild brother die, all the gildship is to bring him where he desired to lie, . . . and let each brother contribute 2d. to the alms, and out of this sum let what is fitting be taken to St Ethelthryth. . . .

is initiated by a solemn vow. A gild becomes a *society* or corporation when its members adopt for certain purposes a common life, or acquire collectively some foundation property ([45]), although the members are not thereby withdrawn from their own family life, and do not part with their own private property. A confraternity becomes a *congregation* when a common life is part of the rule ([46]), coupled with solemn admission, a novitiate, and a special habit.

9. There existed in former times numerous religious gilds and societies in nearly every town and parish in this country ([47]), the objects of which were invariably threefold, viz.—(1) some particular form of charity or temporal good to others; (2) some work of piety or spiritual good; and (3) some kind of social entertainment for mutual benefit ([48]).

10. As a work of temporal charity some undertook the care of the sick, the aged, and the unfortunate through fire or shipwreck ([49]); others helped prisoners or pilgrims, or contributed funds to redeem captives from the infidels, like the celebrated gild of the Gonfalonieri. Others made it their

(45). The term foundation includes (1) fundatio incipiens, or the act of incorporation, and (2) fundatio perficiens, or the dotation. He who makes the first dotation is the founder in law. Stephens' Eccl. Stat. 471, who observes, p. 88, that prior to the statute 15 Ric. II. c. 5, A.D. 1391, restrictions in mortmain did not extend to lands purchased for gilds or fraternities, but only to those purchased for the religious.

(46). Lynd. 151. Congregations existed as corporations aggregate (1) by common consent or repute, as well as (2) by explicit foundation, before the statute 23 Hen. VIII. c. 12. That statute forbad corporations to take property to *religious* uses for more than twenty years, but left unimpaired their power of taking property to charitable uses. The statute 1 Ed. VI. c. 14, took away the property from all. Corporations for charitable purposes were made legal by 14 Eliz. c. 14, and 43 Eliz. c. 4 (Stephens' Eccl. Stat. 494), and hospitals by 39 Eliz. c. 5, A.D. 1597.

(47). Taylor's Index Monasticus gives a list of 909 in the county of Norfolk only.

(48). The *ἀγαπὴ* is the association-meal in the great gild of the Church.

(49). Exeter Gild in Kemble's Saxons in England I. 512: At a house-burning let each man contribute one penny. Gild of Wigendale in Toulmin Smith, p. 117.

business to keep highways, bridges, and city walls in repair; others, again, to build churches, or to supply vestments and chalices to those that required them; others supported schools. These religious gilds must not be confounded either with the *frith-gilds* (50), the object of which was the preservation of the king's peace, the protection of life, and the prosecution of thieves; nor yet with the *hansas* or *merchant-gilds*, the object of which was the promotion of trade (51).

11. Together with works of temporal charity were combined works of spiritual piety, such as the comfort of the dying, the burial of the dead (52), praying for the souls of gild-members alive or dead, the provision of devotional lights in churches (53), the ringing of church bells. And to these were

(50). Lingard's Anglo-Saxon Church II. 62; Stubbs' Const. Hist. I. 413.

(51). Stubbs, p. 414. J. Brooking Rowe in Trans. Devon. Assoc. VIII. 821, states that in 1236 A.D. the abbot and monks of Bucfast became members of the Merchants' Gild at Totnes.

(52). Exeter Gild in Kemble, p. 512: The Assembly was collected in Exeter for the love of God and for our soul's need, both in regard to our health of life here, and to the after-days which we desire for ourselves by God's doom. We have agreed that our meeting shall be thrice in the 12 months—(1) at Michaelmas; (2) at St. Mary's mass after midwinter [2 Feb.]; and (3) at All Hallows' mass. And let the mass priest at each of our meetings sing two masses—one for the living friends, the other for the dead; and let each brother of common condition sing two psalters of Psalms, one for the living and one for the dead; and at the death of a brother each man 6 masses or 6 psalters; and at a death each man 5 pence. Abbotsbury gild in Monast. Angl. I. 278. Judicia civitatis Londin. in Kemble I. 243: And we have ordained respecting every man who has given his wed [contract] in our gildship, if he should die that each gild brother should give a gesuful loaf (*i.e.*, an ubble) for his soul, and sing 50 (psalms) or get them sung within 30 days.

(53). Gild of Wigendale in Toulmin Smith, p. 117: Also, if a gild-fellow die, *i.e.*, perish by water or by land, then shall the gild brethren go seek him 3 mile about and bring him to Christian burial, and the light before him to dirge and church, *i.e.*, a torch that shall burn at the elevation of the mass every Sunday. And when the brethren and sistern be gathered at their general day what good man come to our fraternity, he shall have meat and drink while it will last. Stratford-on-Avon gild, *Ibid.* p. 25, requires payments to be made four times a year, and from this fund one wax-taper to be kept up. "And the taper shall be kept alight every day

added festal celebrations or gatherings for social entertainment on stated days, when, under the management of the steward and caterers, the gild-members met for mutual benefit to both body and soul, and invited others also to partake of their hospitality (54).

12. Among religious gilds the associations of the secular clergy for mutual instruction and the observance of a common rule, after the fashion of the frith-gilds or lay-tithings (55), have had a lasting effect, and have developed into the institution of rural-deaneries. The members of these gilds were pledged to stand by one another for satisfaction (56) if a gild-member were wronged (57), to act as compurgators, to the required number of six or twelve (58) if a member were falsely accused, to abstain from meddling with the gild-relations of outsiders (59),

throughout the year at every mass in the Church before the blessed cross, so that God, and the Blessed Virgin, and the venerable Cross may keep all the brethren and sistern from ill."

(54). Judicia civitatis Londin. in Kemble I. 242 : That we gather to us once in every month if we can have leisure. . . . And let the 12 men have their refection together, and feed themselves as they think right, and deal the remains of the meal for the love of God.

(55). Kemble's Saxons I. 238, 250 ; Stubbs' Const. Hist. I. 414 ; Brown in St. Paul's Eccl. Society III. 239.

(56). Laws of Satisfaction 7, A.D. 725 : Of satisfaction made for violation of orders one share belongs to the bishop, a second to the altar, a third to the fraternity.

(57). Laws of Northumbrian Priests 1, A.D. 950 : If any wrong be offered to a priest, let all his mates, with the help of the bishop, be very zealous for satisfaction.

(58). Law 5 Cnut, A.D. 1017 : If it happen that a priest who lives regularly be impleaded for crimes and want of skill, and he knows himself to be clear, let him make his purgation by himself alone if it be a single accusation [*i.e.*, made by three men]. If the accusation be double [*i.e.*, made by four men] let him purge himself together with two of the same order with him. If he be impleaded by a triple accusation [made by six], let him take six of the same order. Law 19 Cnut, A.D. 1018 ; Concil. London A.D. 1108, Can. 4 : Let him make his purgation by six witnesses. Can. 12 Westminster, A.D. 1200 ; Const. 10 Stratford, A.D. 1342.

(59). Edgar's Law 9, A.D. 960.

and on the death of a member to say each one a trental of psalms for the repose of his soul ([60]).

13. For the establishment of a frith-gild or a merchant-gild no religious recognition is necessary. For the establishment of a religious gild the sanction of the incumbent who has the cure of souls is requisite, and also that of the bishop for any self-governing congregation ([61]). This sanction carries with it three things: (1) the rule is thereby admitted to be an allowed rule of the Church; (2) the cure of souls of the members is committed to the head of the congregation; and (3) the congregation becomes extra-parochial and extra-diocesan to the extent that all monastic institutions are ([62]).

14. A congregation which exists for a philanthropic purpose is called a *hospital* ([63]); one which exists for educational

(60). Concil. London A.D. 940.

(61). Concil. Agath. A.D. 506, Can. 27 ap. Gratian Caus. XVIII. Qu. II. c. 12: Let no one presume to found a new monastery without the bishop's permission or approval. Concil. Chalcedon A.D. 457, Can. 4: That no one anywhere build or establish a monastery contrary to the will of the diocesans. Concil. Montpellier A.D. 1215: Non fiant de caetero confratriae nisi accedente episcoporum auctoritate. Const. 31 Edmund, A.D. 1236; Lynd. 157, 166, 214; Béringer, Les Indulgences II. 8.

(62). Concil. Tolet. IV. A.D. 633, Can. 50 ap. Gratian Caus. XVIII. Qu. II. c. 1: Let bishops (sacerdotes) claim no more authority over a monastery than the canons allow them, viz. [1] to exhort monks to a holy conversation, [2] to institute abbots and other offices, and [3] to correct breaches of rule. Craisson, § 4663. See note 83.

(63). Some hospitals, says Coke 342, (*a*), are [1] corporations aggregate of many, as of master or warden and his confrères; some [2] where the master or warden hath alone the estate or inheritance in him, and the brethren or sisters have power of consent, having a college or common seal. It has been held that only hospitals founded for superstitious purposes (to which the statute 2 Hen. V. St. I. c. 1, A.D. 1414 refers) were included in the statute 31 Hen. VIII. c. 13, which abolished monasteries and abbeys, that act applying only to regular and not to secular foundations. Stephens 239, *Id.* 470, observes that hospitals at which [3] the master or warden "hath the estate in view, but they have no college or common seal," cannot be deemed incorporations, the master or warden being merely a trustee for the house.

purposes a *college* (64); one whose sole aim is the religious life a *convent* (65). At the beginning of the thirteenth century the Fourth Lateran Council forbad the establishment of any new congregations for the religious life, except upon one of the three existing rules of St. Basil, St. Benedict, or St. Augustin (66). In this country all congregations for the exercise of the religious life were abolished by Henry VIII. (67); and by Edward VI. all the property of "colleges, free-chapels, chantries, hospitals, brotherhoods, and gilds," except those existing for trading purposes, was forfeited to the Crown (68).

### Religious Societies or Houses.

15. In its origin a religious house is an associated monastic household, consisting of members who have renounced the world in order the better to devote themselves to God's service by a systematised course of life, but still are free to come and to go and to place themselves in some other household as they find most conducive to holiness. When the inmates live apart in separate cells, the association is called a *laura* (69); when they lead a common life, and have all things in common, a *convent*. The household belongs to the abbot, called *ἀββᾶς*, *ἡγούμενος*, or

(64). The two universities and their colleges were refounded by 13 Eliz. c. 29, A.D. 1570, because they were included in sec. 9 of 1 Ed. VI. c. 14.

(65). Honorius III. in Decret. Lib. v. Tit. XXXI. c. 14, says that private persons "associating themselves together cannot regularly constitute a college unless it is specially conceded to them." This must be understood in a religious sense. Otherwise it was not the law here. See note 46.

(66). Can. 13 in Decret. Lib. III. Tit. XXXV. c. 9; Const. 31 Edmund, A.D. 1236: Because diversity of religion brings confusion into the Church, we charge that they who will found a new religious house or hospital take from us the rule and institution of it. Concil. Lugdun. II. A.D. 1274, in Sext. Lib. III. Tit. XVII. c. 1; Concil. Vien. A.D. 1311, in Clem. Lib. III. Tit. XL. c. 1, condemns the Beguins.

(67). See Gasquet's Henry VIII. and the English Monasteries.

(68). 37 Hen. VIII. c. 4, A.D. 1545, and 1 Ed. VI. c. 14. The last acts were so general that the colleges of Oxford and Cambridge, Winchester and Eton had to purchase mercy. Only trading gilds were exempt.

(69). Evagrius I. 21.

ἀρχιμανδρίτης, who presides over it in temporal concerns, and makes rules affecting the inmates, to which all are subject as long as they continue inmates; but originally the abbot had no rule over the members in spiritual matters.

16. A new departure was taken in the sixth century in the West by the rule of St. Benedict, which substituted religious life in common for associated religious life, and to the customary ascetic vows of poverty and chastity added a further one, that of permanent obedience to the abbot. Thereby, in accordance with the then customary feudal ideas, the monk became the abbot's man, and the latter could reclaim him as such (70), just as a bishop could reclaim a runaway clerk (71). The legal possession of whatever property belonged to the house, and the sole disposal of it, lay with the abbot as the only person competent to own property, all monks being accounted dead men in law (72). In the use, nevertheless, which he made of it he was called upon to consider the purposes for which it had been given, to treat his monks as his children, to provide them with necessaries to the utmost of his ability (73); not to waste the estate (74), or to grant leases of it, or to alienate it without the consent of the family (75) and the bishop (76), and

(70). Concil. Aurel I. A.D. 511, Can. 19: Those who have wandered away when found shall be recalled to custody by the help of the bishop. Gregory IX. in Decret. Lib. III. Tit. XXXI. c. 24: Let abbots and priors every year carefully seek out those who have deserted or been ejected from their monasteries, and excommunicate them if they refuse to return. Ayliffe 13.

(71). Concil. Arelat. IV. A.D. 524, Can. 4.

(72). Innocent III. in Decret. Lib. I. Tit. III. c. 21, states that abbots are *ex officio* bound to act as proctors in the affairs of their congregations. Coke I. Inst. sec. 133: Abbots, priors, and other religious and secular persons are dead persons in law, and have capacity to have lands and goods only for the benefit of the house, and cannot make any testament. Ayliffe 11; 52 Hen. III. c. 28, A.D. 1267, and Stephens' Eccl. Stat. 5. See note 195.

(73). Concil. Clovesho A.D. 747, Can. 4.

(74). *Ibid.*

(75). Concil. Chelsea A.D. 816, Can. 7, says for not more than one life. Honorius III. in Decret. Lib. III. Tit. XXXV. c. 8.

(76). Concil. Agath. A.D. 506, ap. Gratian Caus. XVII. Qu. IV. c. 40; Gre-

not to admit more members than the estate could support (77). An abbot was, moreover, forbidden to convert an exempt into a non-exempt monastery, or to unite a church which belonged to himself in full right (*pleno jure*) (78) without the consent of the brethren.

17. At first the abbot was regarded as the lay-lord only of the house, and had no cure of souls (79). He was himself a layman (80), and according to English use often a lay-woman (81). The Celtic monasteries of associated hermits had their own bishop, who was under the abbot, but there were in Saxon times abbeys which had no presbyters among their members (82). The Gallican and the Roman rule made the abbot subject to the bishop's visitation (83); the old English rule placed him

gory *Ibid.* c. 41; Concil. Epaon. A.D. 517, Can. 8; Const. Kempe, A.D. 1444.

(77). Concil. Clovesho A.D. 747, Can. 28.

(78). Coelestin. in Decret. Lib. v. Tit. XXXI. c. 8.

(79). Gregory Ep. 11, A.D. 594, ap. Gratian Caus. XVI. Qu. I. c. 38: They who as presbyters, deacons, or other clergy of whatever order, in any way discharge the active service of a Church (ecclesiis militant), you cannot allow to be abbots over monasteries.

(80). Wihtraed's Dooms, A.D. 696, Can. 18; Egbert's Answers 7, 11, and 12; Gregory ap. Gratian Caus. XVI. Qu. I. c. 2: No one can preside over the government of a monastery whilst daily obliged to continue in the service of the Church.

(81). Gregory ap. Gratian Caus. XVIII. Qu. II. c. 20, forbids women to have the run of monasteries, or monks to employ them to manage their households (commatres). Theodori Poenit. II. VI. 8 in Haddan and Stubbs III. 195: Men may not preside over women monks, nor women over men; yet we do not destroy the custom which prevails in this land. In 700 A.D., four out of the eight monasteries in Kent are found governed by abbesses. H. and S. III. 242.

(82). Concil. Clovesho A.D. 747, Can. 5; Ayliffe 12.

(83). Concil. Aurel. I. A.D. 511, Can. 19 ap. Gratian Caus. XVIII. Qu. II. c. 16; Concil. Arelat. V. Can. 2, A.D. 554, *Ibid.* c. 17; Gregory *Ibid.* c. 19 and 23; Concil. Rothomag. A.D. 650, *Ibid.* c. 29: Not once but often in the year let bishops visit monasteries, and if aught be amiss, let it be amended. Egbert's Excerpt. 62, A.D. 740: Let abbots continue under the power of the bishop, and if they transgress their rule let the bishops correct them. Concil. Autissiodor. A.D. 578, Can. 23, directs an abbot to be sent to another monastery to do penance who fails to inform the bishop or archdeacon of

under the archbishop (84); and to preserve the ancient freedom of monks to place themselves under whom they pleased, the rule of St. Benedict gave to the community the power of electing their abbot with the bishop's assistance (85), and required him when elected to be admitted to office by the bishop's benediction (86). By the rule of the ninth century the abbot was himself required to be in Holy Orders (87); and then, under the influence of the same causes which perfected the parochial system in the eleventh century, the household became a recognised centre of religious ministrations, of which the abbot was deemed to have the cure of souls (88). He then nominated to the bishop those who were required to be ordained for the

the offences of a monk. Concil. Lat. III. A.D. 1179, in Decret. Lib. v. Tit. XXXI. c. 5, authorises abbots to refuse more than canonical obedience. Innocent III. *Ibid.* Lib. III. Tit. XXXV. c. 8; Honorius III. *Ibid.* Lib. v. Tit. III. c. 43, requires Cistercian abbots to take an oath of canonical obedience to the bishop.

(84). Wihobaed's privilege, A.D. 692, Can. 3: When an abbot departs this life let it be notified to the archbishop, and let such an one as is worthy be chosen with his advice and consent.

(85). Gregory ap. Gratian Caus. XVIII. Qu. II. c. 3 and 4; Theodori Poenit. II. VI. 3, A.D. 680, in Haddan and Stubbs III. 195: The congregation ought to choose for themselves an abbot after a death. Concil. Chelsea A.D. 787, Can. 5: If an abbot departs this life, let religious pastors of approved life be chosen from among themselves in the Lord, with the advice of the bishop within whose parish the monastery is situate. Concil. Chelsea A.D. 816, Can. 4.

(86). Boniface, writing to Cuthbert, A.D. 746, in Haddan and Stubbs III. 381, calls those robbers and sacrilegious persons who intrude themselves into monasteries without the bishop. Concil. Chelsea A.D. 816, Can. 8; Concil. London A.D. 1126, Can. 3: That at the blessing of abbots a cope, a carpet, a towel, a basin be not demanded. Concil. Westminster A.D. 1138, Can. 3; Alexander IV. in Sext. Lib. v. Tit. VII. c. 3; Chron. Monast. de Abbendon II. 281, relates that when Siward, who was elected abbot in 1034 A.D., received the benediction, to all the customary interrogatories he answered No, but when asked if he wished to be blessed, replied, I desire to have God's blessing and yours.

(87). Concil. Clovesho A.D. 803, in Haddan and Stubbs III. 545, forbids the future appointment of laymen and seculars as abbots.

(88). Concil. Westminster A.D. 1102, Can. 18.

spiritual needs of his household (89), and appointed confessors for his monks (90). His jurisdiction thus extending over clergy as well as over laity, he was accounted a prelate (91), in token whereof he used a pastoral staff (92), and had a seal of office (93). If he had been blessed he was allowed to bestow minor orders upon his subjects (94), and to give the solemn benediction to the people in Churches belonging to himself in full right (*pleno jure*) (95).

18. As being the head of a religious household (96), an abbot was always required to be of approved life (97), and by mediaeval rule might not be admitted to office until he had himself made the profession of a monk (98). That he might have abundant evidence of his own holy life, he was directed to change his chaplain every year (99). It was declared to be his duty to see that his subjects were regular in their conversation (100), and that they applied themselves to reading and study (101); but his authority was strictly confined to his own subjects (102).

(89). Const. I. Reynolds, A.D. 1322 : We enjoin abbots and priors not to cause their monks and canons to be ordained by any bishop except the diocesan.

(90). Concil. Westminster A.D. 1102, Can. 18 : That monks enjoin penance to none without their abbot's consent.

(91). Ayliffe 6 ; Const. 35 Langton, A.D. 1222.

(92). Chron. Monast. de Abbendon II. 286, relates that when Faritius was appointed abbot in 1102 A.D., he placed his pastoral staff above the altar directly after mass, because Archbishop Anselm was then in exile.

(93). Const. 28 Otho, A.D. 1237.

(94). Innocent III. A.D. 1210, to the Archbishop of Rouen, in Decret. Lib. I. Tit. XIV. c. 11 ; Alexander IV. in Sext. Lib. V. Tit. VII. c. 3.

(95). Alexander IV. l. c.

(96). Alexander IV. in Sext. Lib. V. Tit. VII. c. 3.

(97). Gregory ap. Gratian Caus. XVIII. Qu. II. c. 3 and 4 ; Wihtraed's Privilege, A.D. 692, Can. 3 : Let such an one as is worthy be chosen. Concil. Chelsea A.D. 787, Can. 5.

(98). Const. 19 Otho, A.D. 1237.

(99). Const. 37 Langton, A.D. 1222.

(100). Concil. Clovesho A.D. 747, Can. 4.

(101). *Ibid.* I. Can. 7.

(102). Theodori Poenit. II. VI. 16, in Haddan and Stubbs III. 196 : A monastery has no power of imposing penance on seculars, because that is

Even when by special privilege he had peculiar jurisdiction over the parishioners of his own churches, he could not conclude in matrimonial causes, enjoin public penance, nor grant indulgences without the bishop's sanction (103).

19. When the abbot had thus acquired a quasi-episcopal position, the cure of souls of the community was usually exercised under him by the prior and sub-prior, and the care of the temporal concerns by other officers, called obedientials. A prior is the acting head in spirituals of a religious house; the sub-prior is his deputy. Priors are, however, said to be of three kinds (104), viz. (1) *claustral*, (2) *conventual*, and (3) *secular*. A claustral prior is the abbot's deputy in spirituals, where there is an abbot (105). A conventual prior is the actual, as well as the acting, head of a smaller religious house, where there is no abbot. He has therefore charge of the temporalities as well as the spiritualities, and as such is called *provost* (106). A secular prior is the head of a body of secular clergy having the cure

proper to the clergy. Concil. Westminster A.D. 1102, Can. 18: That abbots give no license to enjoin penance to any but such whose souls are entrusted to their care.

(103). Paschal II. ap. Gratian Caus. XVI. Qu. 1. c. 9: It has reached our ears that certain monks and abbots arrogantly assume in your diocese episcopal rights and offices contrary to the decrees of the holy fathers, to wit, penance, the remission of sins, and reconciliation, tithes, and churches—this we entirely forbid. Ayliffe 13.

(104). Concil. Lat. III. A.D. 1179, in Decret. Lib. III. Tit. XXXV. c. 2, names claustral and conventual priors; Honorius III. *Ibid.* Tit. XXXVII. c. 3 and 4, conventual priors; Clement V. in Clem. Lib. I. Tit. II. c. 2, claustral priors.

(105). Concil. London A.D. 1126, Can. 7: That none be promoted to a deanery or priory save a presbyter. Innocent III. in Decret. Lib. III. Tit. XXXV. c. 6: But let the prior next after the abbot be powerful before the rest in deed and discourse, so that he may be able both to teach the brethren by example of life and word of doctrine, and also to reclaim them from evil; having a conscientious zeal for religion, so that he may upbraid and correct offenders, but cherish and comfort the dutiful.

(106). Concil. Vien. A.D. 1311, in Clem. Lib. III. Tit. X. c. 1, § 7: Let no conventual priory be given to any one unless he has attained his twenty-fifth year.

of souls of a collegiate church (107). The two latter have a perpetual office, and are dignitaries, but a claustral prior is not (108).

20. Those who take charge of the temporal concerns of a religious house under an abbot are termed *obedientials.* Such are the chamberlain, the kitchener, the cellarer, the refectioner, the infirmarer, the hosteller or dispenser, and the hayward (109). All these are required to render up their accounts twice or four times a year before the community according to custom, but this rule does not apply to any private estates which they may hold as a benefice of office distinct from those of the convent (110). By the rule of the thirteenth century, obediences or benefices of office were forbidden to be granted as freeholds (111). Both priories and obediences were also forbidden to be given for money (112), but those who hold them are permitted to farm manors or tithes belonging to their own monasteries (113).

(107). Innocent III. in Decret. Lib. III. Tit. XXXV. c. 5, and Tit. XXXVI. c. 5. Ayliffe 7.

(108). Concil. Lat. III. A.D. 1179, Can. 10, in Decret. Lib. III. Tit. XXXV. c. 2; Concil. Westminster A.D. 1200, Can. 15: Let not priors once appointed be removed except for dilapidations, incontinence, or some manifest cause.

(109). Hist. Monast. de Abbendon II. 384 enumerates the above, A.D. 1230. Berkshire Domesday mentions the kitchener as holding an estate of the abbey of Abingdon.

(110). Const. 35 Langton, A.D. 1222: That the obedientials of monasteries, as well as the greater prelates, do twice or four times in the year yield up their accounts before the brethren, or before their superiors, according to the custom of the monastery. Such prelates as have estates distinct from those of the monks are not bound by this constitution.

(111). Innocent III. in Decret. Lib. III. Tit. XXXV. c. 6: Nor let any benefice of office (obedientia) be given to any one to be held by him as a perpetuity for life. Ayliffe 6.

(112). Concil. Lat. III. A.D. 1179, Can. 10 in Decret. Lib. III. Tit. XXXV. c. 2; Concil. Ebor. A.D. 1195, Can. 14: We forbid monks to take to farm such places as are called obediences. Concil. Westminster A.D. 1200, Can. 15.

(113). Const. 46 Langton, A.D. 1222: Let neither a canon regular nor monk take any church [rights to tithes] or manor to farm that belongs to

21. When a religious house has once been established, and become (as it could not fail to become in a heathen country) the centre of the religious life of a neighbourhood, it may not be removed elsewhere without the consent of the bishop and the congregation, and in every case of transfer a priest must be left behind to care for the religious needs of the people (114).

### Admission to the Religious Life.

22. The religious life may be entered upon in one of two ways (115): (1) by being dedicated to it in childhood, which is equivalent to a tacit profession (116); and (2) by voluntarily undertaking its vows, which is an express profession. As all public vows admit of two degrees (117), so there are two degrees in the profession of religion: (1) a lower degree, of those who have expressed a desire to enter it, and are called the converted ones (*conversi*) (118)—postulants, petitioners or novices; and (2)

his own Church, nor have any manor committed to his custody, unless he be an obediential. Hist. Monast. de Abbendon II. 299, A.D. 1188: The chamberlain ought to hold [Welford and Chieveley] as freely and independently as the abbot holds his.

(114). Theodori Poenit. II. VI. 7 in Haddan and Stubbs III. 195; Gratian Caus. XVI. Qu. VII. c. 41; Concil. Lugdun. A.D. 1274, in Sext. Lib. III. Tit. XVII. c. 1, requires Papal consent. Const. 2 Kempe, A.D. 1444.

(115). Concil. Tolet. IV. A.D. 633, ap. Gratian Caus. XX. Qu. III. c. 2, and Qu. I. c. 3: A monk becomes such either by his father's dedication of him, or by his own profession. Whichever it be, when it is concluded, it will be binding on him (alligatum tenebit). Gregory II. A.D. 726, *Ibid.* c. 2: If a father or mother have placed a son or daughter within the bounds of a monastery in years of infancy under a regular rule . . . such ought not when they have grown up to go forth and indulge in matrimony.

(116). Devoti Lib. I. Tit. IX. § 13.

(117). See *Discipline Generally*, § 26.

(118). Concil. Aurel. I. A.D. 511, Can. 21, speaks of monks either (1) conversi, or (2) qui acceperunt pallium; Gregory, A.D. 599, ap. Gratian Caus. XIX. Qu. III. c. 7, speaks of Ingredientes monasterium convertendi gratia, *Id. Ibid.* c. 6: Miles si converti voluerit. Hieronym. *Ibid.* Caus. XII. Qu. I. c. 7: Ut sunt clerici et Deo devoti videlicet conversi. Alexander III. in Decret. Lib. III. Tit. XXXI. c. 7, also speaks of monachos vel con-

a higher degree, of those who have taken the solemn vow, and are called the religious (119)—professed monks and nuns. In later times the term "converted ones" was usually applied to the lay brethren who did the menial work of the monastery, and they among the Carthusians occupied a position very much below that of professed monks.

23. Children may be dedicated to the religious life by their parents, provided this is done before boys are fourteen (120), and before girls are twelve years of age (121). Such dedication should take place before witnesses (122). By Gallican usage the dedicated child (*oblatus*) was presented to the abbot by his next-of-kin, wrapped in an altar-cloth (123), as an offering to the Church (124), and the abbot's blessing was deemed equivalent

versos. Lynd. 152 : The converted and others aforesaid who are devoted to divine office, although they are not ordained, nevertheless, by reason of their profession and habit, differ from laymen.

(119). Concil. Lat. IV. A.D. 1215, in Decret. Lib. III. Tit. XXXVI. c. 9 ; Const. 45 Langton, A.D. 1222 : Since religious persons have no property. Const. 31 Edmund, A.D. 1236 : Because too great diversity of religions [*i.e.*, rules of profession] brings confusion. Const. 18, 19, 20 Peckham, A.D. 1281.

(120). Concil. Tolet. X. A.D. 656, Can. 6 ap. Gratian Caus. XX. Qu. III. c. 1 ; Theodori Poenit. II. XIV. 5 in Haddan and Stubbs III. 202 : One infant may be given to a monastery to God instead of another which he had vowed to give ; yet it were better to fulfil the vow. Egbert's Excerpt. 92.

(121). Concil. Tribur. A.D. 895, Can. 2 ap. Gratian, *Ibid.* c. 2 ; Clemens III. in Decret. Lib. III. Tit. XXXI. c. 12.

(122). Gratian *Ibid.* c. 4 ; Egbert's Excerpt. 92.

(123). Objection was raised ap. Gratian Caus. XX. Qu. III. c. 1, that Lambert was not a monk—(1) because he had professed no rule ; (2) his father had never offered him pallio altaris indutum ; and (3) he had never received the abbot's benediction. Nicolaus *Ibid.* c. 4, speaks of a monk being presented pallio altaris indutum (alias palla). *Ibid.* III. Dist. I. c. 40, contains a direction not to wrap the dead in an altar-cloth, nor for the deacon to cover his shoulders with it. Concil. Tolet. X. A.D. 656, *Ibid.* Caus. XXVII. Qu. 1. c. 36 : Women coming to religion cover their heads with a cloth (pallio). Concil. Aurel. I. Can. 26, quoted note 118, uses pallium accipere, as equivalent to making his profession.

(124). Such offerings were made at other times. Concil. London A.D. 1126, Can. 3 : That at the consecration of bishops, blessing of abbots,

to co-optation by the brethren. When he attained his fourteenth year he could, if he wished, depart within twelve months (125), and, according to St. Basil, might marry before his sixteenth year, if such a course were necessary; but in that case he had to submit to penance (126).

24. When the religious life is adopted voluntarily, boys must be fifteen and girls sixteen or seventeen before being allowed to adopt it (127). They must also go through a period of probation (128); and by English rule, and that of other places wherever the rule is a severe one, they must be eighteen before making their profession (129), or it is not binding (130). By the rule of St. Pachomius (131), which was also for a time followed in the West, three years were required for the probation (132). In St. Gregory's time the three years were generally abbreviated to two (133). Subsequently one year was held to be

dedication of churches, a cope, a carpet, a towel, a basin be not demanded by force, nor taken unless freely offered. Concil. Westminster A.D. 1138, Can. 3.

(125). Coelestin III. in Decret. Lib. III. Tit. XXXI. c. 14, and Concil. Lugdun. I. A.D. 1234, in Sext. Lib. III. Tit. XIV. c. 1.

(126). Theodori Poenit. I. VIII. 14 in Haddan and Stubbs III. 184: Basil held that a boy might be allowed to marry, if he could not contain, before his sixteenth year, although he had previously been a monk, but in that case he should rank among bigamists and do penance.

(127). Theodori Poenit. II. XII. 6 in Haddan and Stubbs III. 201.

(128). Gregory, ap. Gratian I. Dist. LIII.; Concil. Clovesho A.D. 747 Can. 24: That rectors of monasteries examine every one whilst he is in the lay habit, before his conversion to the monastic life.

(129). Gregory Lib. I. Epist. 48 ap. Gratian Caus. XX. Qu. 1. c. 5: Because the rule (congregatio) of the monks in the islands is a hard one, we forbid youths being received in the said monasteries under eighteen years of age. Const. 41 Langton, A.D. 1222: That none be admitted monks under eighteen years of age, unless evident utility or necessity require.

(130). Alexander III. in Decret. Lib. III. Tit. XXXI. c. 8. See *Discipline Generally*, § 28.

(131). Regula Pachomii ed. Vallarsi II. 50.

(132). Nov. 115, c. 55 ap. Gratian Caus. XVII. Qu. II. c. 3.

(133). Gregory *Ibid.* Caus. XIX. Qu. III. c. 6: Let no monasteries by any means dare to give the tonsure to such as they have received for conver-

sufficient (134), and even less than a year, except in the case of friars (135). Such, however, as had taken a vow to enter religion (136), or had worn the habit of professed monks for above a year, were held in the thirteenth century to be tacitly professed, and if they declined to make an explicit profession afterwards, were ordered to be treated as apostates (137).

25. With the exception of children dedicated in infancy, the profession of religion must always be made, (1) of free choice (138); (2) by those capable of making it—not, therefore, by a slave against his master's will (139), nor by a bishop without

sion before they have fulfilled two years in novitiate (conversatione, for which others read conversione).

(134). Decret. Lib. III. Tit. XXXI. c. 16: The regular institution forbids any one becoming a monk before one year. Sext. Lib. III. Tit. XIV. c. 1 and 3.

(135). Boniface VIII. in Sext. Lib. I. c 3: The constitution of Innocent [IV. *Ibid.* c. 1] which forbids the profession of the converted to be received before the year of probation is ended, our predecessor, Alexander [IV. *Ibid.* c. 2], extended to the orders of Preachers and Minorites. We, led by similar considerations, extend the same declaration to the other mendicant orders. In other religious rules profession may be lawfully made expressly or tacitly within the year. If made expressly, it strictly binds to the form of religion which is professed, even though the habit be not changed. If it is tacitly made within the year of probation by taking the habit which is only given to those professing, it does not pledge the recipient specially to that religion to which the habit belongs, but generally to some form of religion, *i.e.*, supposing him to be of sufficient age, to have assumed it knowingly and voluntarily, and to have continued to wear it three years.

(136). Innocent III. A.D. 1198, in Decret. Lib. III. Tit. XXXI. c. 13 and 17.

(137). Alexander III. to Bishop of Ely, *Ibid.* c. 9, says if they only wear the novice's habit they may return to the world; Innocent III. A.D. 1204, *Ibid.* c. 20, that they may return to the world within a year; and *Id.* A.D. 1212, *Ibid.* c. 21, that they are not thereby disqualified for orders or holding a benefice. Honorius III. *Ibid.* c. 22, says that if they wear the habit for more than a year they are to be deemed professed. Both statements are repeated by Gregory IX. *Ibid.* c. 23, and embodied in Const. 18 Peckham, A.D. 1281.

(138). Alexander III. in Decret. Lib. I. Tit. XL. c. 1. See *Discipline Generally*, § 23.

(139). Concil. Chalcedon A.D. 451, Can. 4: Boniface ap. Gratian Caus. XVII. Qu. II. c. 3.

the consent of his metropolitan (140), nor by a married man without his wife's consent (141); and (3) it must be made before the proper persons (142). No one may under any circumstances be admitted to a monastery for a pecuniary consideration (143). One who has been induced to enter by fraud should remain, but the monastery should not have the benefit of his property (144); or the vow may be set aside (145), provided application is made for that purpose within five years (146). One who is forcibly detained should be unconditionally set free (147).

26. When a monk is received or makes his profession (148). he puts on the habit of a professed monk, if it is different from the novice's habit (149), receives the tonsure (150), and solemnly vows to keep the rule (151). The abbot then offers the Eucharist, and repeats over him three prayers (152), which are

(140). Innocent III. in Decret. Lib. I. Tit. IX. c. 10, and Lib. III. Tit. XXXI. c. 18.

(141). Coelestin. III. l. c. Lib. III. Tit. XXXII. c. 12: See *Discipline Generally*, § 28; *Wedlock*, § 21.

(142). Innocent III. A.D. 1198, l. c. Lib. III. Tit. XXXI. c. 16.

(143). Concil. Westminster A.D. 1127, Can. 3: We condemn all demands of money for admitting of monks, canons, or nuns. Concil. London A.D. 1175, Can. 8: Let no prelate exact or take, by way of bargain, any price for the reception of any monk, canon, or nun who enters a religious life, under pain of anathema. Concil. Westminster A.D. 1200, Can. 15; Const. 39 Langton, A.D. 1222: That nothing be demanded for the reception of any one into a religious house.

(144). Concil. Cabilon. II. A.D. 813, ap. Gratian Caus. XX. Qu. III. c. 5.

(145). Nicolaus, *Ibid.* c. 4.

(146). Devoti Lib. I. Tit. IX. § 15.

(147). Eugenii Synod. A.D. 826, ap. Gratian Caus. XX. Qu. I. c. 9; Nicolaus *Ibid.* Qu. III. c. 4.

(148). Theodori Poenit. II. III. 3 in Haddan and Stubbs III. 192, calls it ordinatio monachi. For a description of the Benedictine form of admission, see Lingard's Anglo-Saxon Church I. 204. See Dionysius de Eccles. Hier. c. 6, quoted note 172.

(149). Decret. Lib. III. Tit. XXXI. c. 13 and 22.

(150). Gregory ap. Gratian Caus. XIX. Qu. III. c. 6; Concil. Clovesho A.D. 747, Can. 24.

(151). Clemens III. in Decret. Lib. III. Tit. XXXI. c. 13.

(152). Theodori Poenit. II. III. 3 l. c. A detailed account of the admission of a professed monk is given in Hist. Monast. de Abbendon II. 318.

termed the benediction (153). He thereupon covers him with a cowl, which he removes after seven days (154). The solemn profession of religion is deemed equivalent to a second baptism (155). The house in which it is made is ever afterwards the monk's home (156), and he is the abbot's man, and cannot remove to another house (157) without the abbot's leave, except to follow a stricter rule (158).

27. Admission to religion did not in early days admit to the privileges or duties of order (159); nay, more, the observance of the monastic rule was at first considered incompatible with the exercise of order (160). In the fourth century, however, clerical monks began to be allowed to continue to exercise their office (161), and next the practice was introduced of ordain-

(153). Nicolaus l. c. says benedictione percepta.

(154). Theodori Poenit. II. III. 3 l. c.

(155). Hieronym. Ep. 22 ad Paulam, says "to enter upon a monk's life is to wash oneself with a second baptism of a vow." Dionysius de Eccles. Hier. c. 6 calls monastic consecration a sacrament (*μυστήριον*). Theodore l. c.: On the seventh day the abbot should remove the covering, as the priest in baptism removes the veil of infants; . . . because it is a second baptism, according to the judgment of the fathers, whereby all sins are forgiven, as in baptism.

(156). Concil. Agath. A.D. 506, Can. 27 ap. Gratian Caus. XX. Qu. IV. c. 3: Concil. Hertford A.D. 673, Can. 4: That monks continue in that obedience which they promised at the time of their conversion. Concil. Clovesho A.D. 747, Can. 24: Let them not by any means rashly expel him.

(157). Odo, Can. 6, A.D. 943; Urban II. ap. Gratian Caus. XIX. Qu. III. c. 3. See § 4, note 28.

(158). Decret. Lib. III. Tit. XXXI. c. 10, 18.

(159). Hieronym. Epist. XIV. c. 8: The case of monks is one, the case of clergy another. See note 172.

(160). Cassian de Inst. Coenob. XI. 17 says that the old rule of the Fathers was that a monk ought carefully to avoid a woman and a bishop, for neither of them would let him attend to the quiet of his cell, or give his mind to divine contemplation. Gregory ap. Gratian Caus. XVI. Qu. l. c. 2: No one can simultaneously attend to ecclesiastical duties and strictly follow the rule of a monk. Boniface ap. Gratian *Ibid.* c. 25, objects that those who are dead to the world cannot exercise the power of the keys.

(161). Unknown author ap. Gratian Caus. XVI. Qu. l. c. 21: We approve of learned and devout monks, who have been dedicated with the

ing monks (162), to obtain which the leave and request of the abbot was then necessary (163). By ordination they were not emancipated from the observance of their rule (164), but were placed in a position to be of service to others. Ordained monks are not therefore allowed to officiate, even in their own monasteries, without the bishop's leave (165), nor outside them without their abbot's leave also (166). If, with the abbot's leave, they at any time minister outside them, they are required to be wholly under the bishop (167).

28. When a vow of religion has once been taken, even in simple form, it ought to be fulfilled. Hence all who forsake the cloister for military or married life (168), before taking the

honour of the priesthood, being allowed to baptize, to preach, to give penance, and to forgive the debts (debita) of the poor. Other authorities *Ibid.* c. 22–25. The practice is stated to have been introduced by St. Athanasius.

(162). Hieronym. ad Rusticum, A.D. 402, *Ibid.* c. 26: So live in the monastery as to deserve the clerical office. If the people or the bishop choose you to such office, do the duties of it. Gelasius, A.D. 494, *Ibid.* c. 28, and I. Dist. LV. c. 1, permits monks to be ordained to parishes where secular clergy cannot be had. Concil. Ilerd. A.D. 523, Can. 3, *Ibid.* c. 34; Gregory *Ibid.* Caus. XVI. Qu. 1. c. 32.

(163). Concil. Agath. A.D. 506, Can. 27 ap. Gratian Caus. XVI. Qu. 1. c. 33; Concil. Ilerd. A.D. 523, Can. 3, *Ibid.* c. 34; Gregory *Ibid.* I. Dist. LVIII. c. 1.

(164). Innocent, A.D. 404, ap. Gratian Caus. XVI. Qu. 1. c. 3; Theodori Poenit. II. VI. 12 in Haddan and Stubbs III. 195: If the congregation have elected a monk to be ordained for them to the degree of presbyter, he ought not to intermit his former conversation. Concil. London A.D. 1138, Can. 14: That monks who have been long in a monastery ought not to recede from their former way of living when they become clerks.

(165). Gregory ap. Gratian Caus. XVI. Qu. 1. c. 13, to the bishop of the city: The abbot of St. Gregory's complains to us that you forbid the celebration of mass and the burial of the dead in his monastery. We entreat you to desist from such inhumanity.

(166). Gelasius ap. Gratian Caus. XVI. Qu. 1. c. 28; Concil. Agath. A.D. 506, Can. 27, *Ibid.* c. 33; Concil. Tarracon. A.D. 516, Can. 11, *Ibid.* c. 35: We forbid monks to leave their abbey and discharge any ecclesiastical function, except by command of the abbot.

(167). Gelasius l. c.; Innocent III. A.D. 1209, in Decret. Lib. III. Tit. XXXVI. c. 7, *Id.* A.D. 1198, *Ibid.* c. 8.

(168). Augustin ap. Gratian Caus. XXVII. Qu. 1. c. 41, says that a marriag

solemn vow, are required to do penance for the transgression (169), and can never afterwards be admitted to orders (170). Those who violate the solemn vow by renouncing the monastic life, and refuse to return to it when pressed, are ordered to be excommunicated as apostates (171).

### Duties of the Religious Life.

29. The order of monkhood, although not, like the presbyterate, an order endowed with a special spiritual gift (172), is yet

concluded after a [simple] vow cannot be dissolved. Also Caus. xxvii. Qu. ii. c. 20–26 : Alexander iii. in Decret. Lib. iii. Tit. xxxi. c. 1 and 2 ; Innocent iii. *Ibid.* c. xix. ; Devoti Lib. ii. Tit. ii. § 129.

(169). Leo ap. Gratian Caus. xx. Qu. iii. c. 1 : One who deserts the profession of a single life for military service or marriage must be purified with the satisfaction of public penance, because, although military service is innocent and marriage honourable, still it is a transgression to have deserted the choice of better things. Apost. Const. iii. 1. and iv. 14 ; Concil. Arelat. ii. a.d. 460, *Ibid.* i. Dist. l. c. 69 ; Theodori Poenit. i. xiv. 5 in Haddan and Stubbs iii. 188, and ap. Gratian i. Dist. xxvii. c. 3, and Caus. xxvii. Qu. l. c. 43 : If any man having a simple vow of chastity marries a wife, let him not put her away, but do penance for three years. *Id.* i. viii. 12, *Ibid.* p. 174 : If any one renounces the world, and then resumes the secular habit . . . let him do penance for ten years, and after the first three the bishop may deal mercifully with him. Egbert's Excerpt. 65. See *Discipline Generally*, § 27.

(170). Concil. Arelat. ii. a.d. 460, ap. Gratian Caus. xx. Qu. iii. c. 1 ; Concil. Aurel. i. a.d. 511, Can. 23, *Ibid.* Caus. xxvii. Qu. l. c. 32 ; Theodori Poenit. i. ix. 2 in Haddan and Stubbs iii. 185. But see note 137.

(171). Concil. Chalcedon, Can. 7 ap. Gratian Caus. xx. Qu. iii. c. 2 and 16, *Ibid.* Caus. xxvii. Qu. l. c. 22 ; Concil. Turon. ii. a.d. 567, Can. 15, excommunicates professed monks who marry, and separates them from their wives. Concil. Tribur. a.d. 895, *Ibid.* c. 2 ; Gregory *Ibid.* c. 39 ; Concil. Winton a.d. 1071, Can. 12 ; Concil. Westminster a.d. 1102, Can. 11 : That monks or clergymen who have forsaken their order do either return or be excommunicate. Concil. Lat. ii. Can. 7, a.d. 1139, *Ibid.* c. 40 ; Alexander iii. to Bishop of Ely, in Decret. Lib. iii. Tit. xxxi. c. 9, and c. 13 and 17 ; Const. 19 Peckham, a.d. 1281 : These cannot desert their religious habit, but must at least continue in a laxer state of religion.

(172). Dionysius de Eccles. Hier. c. 6 : The order higher than all the initiated is the sacred order of the monks. . . . Wherefore the divine insti-

under the same obligation with it to devote to God's service in prayer, praise, and contemplation the life redeemed by Christ; and by doing what is just before men, living regularly and interceding for all (173), to be perpetually pointing to higher things (174). Since the fourth century laymen in general have to a great extent shaken off these obligations, or contented themselves with fulfilling them by deputy (175); but upon monks they are held to be binding to the fullest extent, as those who have voluntarily bowed their neck to the yoke of Christian vows, and undertaken to give full expression to the Church's true and perfect life.

tution accorded them a perfecting grace, and deemed them worthy of a certain invocation for their consecration—not of sacred government, for that is confined to the sacerdotal orders—but of sacred action, as being hallowed by the hierarchical consecration in the second degree. Elfric Can. 18 A.D. 957 : There is no order appointed by ecclesiastical institution but these seven. Monkship and abbotship are of another sort, and are not to be reckoned in their number.

(173). Justin I. Apol. c. 10 : God accepts those who imitate the excellences which reside in Him, viz., temperance, justice, and kindness. Concil. Augustodun. A.D. 670, Can. 15 : Let all monks be in every way obedient, distinguished for frugality, fervent in the work of God, persevering in charity, lest through negligence and disobedience they become a prey to the enemy who goeth about roaring and seeking whom he may devour. Concil. Gall. A.D. 616, Can. 4 : That monks live according to rule. Syn. Rom. A.D. 826, ap. Gratian Caus. V. Qu. III. c. 3 ; Concil. Ensham. A.D. 1009, Can. 1 : That men of every order do in earnest submit themselves every one to that law which concerns them both in regard to God and the world ; and specially that God's servants, the bishops and abbots, the monks and minikins, canons and nuns, betake themselves to what is right, and live regularly, and earnestly intercede for all Christian people.

(174). Gasquet, in Montalembert's Monks of the West. The perpetual round of prayer and praise is something more than an intercessory power. It, rightly understood, is the medium of intercourse between the monastic body and the people in the midst of which it dwells. No one is so dull that he cannot understand the faith in the unseen, the hope of another world, and the burning love of God, which are manifested in the perennial sacrifice and song of praise of the monastic choir. . . . The choir of the monastery is the monk's real pulpit, and the daily office his most efficacious sermon.

(175). Lynd. 44.

30. In the first ages of the Church ([176]) the higher ascetic life was undoubtedly optional, and a counsel of perfection; nay, more, the particular manner of pursuing it was also optional. In time, however, various rules or systematised forms of life, called religions ([177]), commended themselves by experience as better suited than others for the purpose; some rules containing fixed and written directions, others leaving everything to the abbot's discretion ([178]). All agree in making poverty ([179]), temperance, and chastity ([180]) the initial requirement of monastic discipline, and where there is a common life there must of necessity be obedience ([181]).

31. Foremost among the counsels of perfection is the renunciation of property in every form or shape ([182]). The young

(176). Acts v. 4: St. Peter says to Ananias, who wished to rank as a member of the communistic brotherhood at Jerusalem, without bringing all that he possessed into the common fund: Whiles it remained, was it not thine own? And after it was sold, was it not in thine power? . . . Thou hast not lied unto men, but unto God. See *Excesses*, note 12.

(177). Concil. Lat. IV. in Decret. Lib. III. Tit. XXXVI. c. 9; Const. 31 Edmund, A.D. 1236, quoted note 119.

(178). Cassian de Inst. Coenob. Lib. II. c. 2; Mabillon in Praefat. ad Annales Benedict I. XXXIV. points out that sometimes more than one rule was followed under the same roof.

(179). Matt. XIX. 21, 27–29; Luke XVIII. 28–30; Concil. London A.D. 1075, Can. 2; Const. 45 Langton, A.D. 1222.

(180). Matt. XIX. 11–13; 1 Cor. VII. 37, 38; Ambros. ap. Gratian Caus. XXXII. Qu. I. c. 13 declares chastity to be a counsel of perfection. Innocent III. in Decret. Lib. III. Tit. XXXV. c. 6: The renunciation of property and the preservation of chastity are so bound up with the monastic life that not even the Pope can grant a license to dispense therewith.

(181). Hieronym. ad Eustoch. Ep. 22, c. 35; The confederation was that they should obey their superiors, and do everything they were ordered to do. Theodori Poenit. II. VI. 13 in Haddan and Stubbs III. 195: If a monk, after being ordained, prove proud, or disobedient, or vicious, . . . let him be deposed. Alcuin Epist. *Ibid.* 470, 510.

(182). Eusebius VII. 32 relates that Pierius was celebrated for his voluntary poverty. Augustin ap. Gratian Caus. XII. Qu. I. c. 11: Call nothing your own, but let all things be in common. Concil. Autissiodor. A.D. 578, Can. 23; Concil. Gall. A.D. 616, Can. 3; Gregory in Decret. Lib. III. Tit. XXXI. c. 5: Nor do you allow any monk to have anything of his own (peculiare). Concil. Augustodun. A.D. 670, Can. 1; Concil. London A.D.

man who, desiring to be perfect, was told by Christ to sell all that he had (183), and the Christians of Jerusalem having all things in common (184), are the types for this life. Those who have food and raiment are bidden therewith to be content (185). Religious persons are not therefore allowed to trade (186), or to have any dealings involving money, except as obedientials in their own monasteries (187). They may not act as executors (188), or as bishop's officials (189), or farm benefices (190). They may not even have private property in clothing (191), a separate room (192), or a separate table, except they are sick or

1075, Can. 2 : If any monks without license are found to have anything of their own, and do not with repentance confess and discard it before they die, let not the bells be tolled nor the salutary sacrifice be offered for such an one. Concil. Lat. III. A.D. 1179, in Decret. Lib. III. Tit. XXXV. c. 2 ; Concil. Westminster A.D. 1200, Can. 15 : Let not monks have any property. Clemens III. *Ibid.* c. 4, extended the same rule to canons regular.

(183). Matt. XIX. 21.

(184). Acts IV. 32 ; Διδαχή IV. 8 : Thou shalt share all things with thy brother, and shalt not call them thine own ; for if ye are fellow-sharers in that which is imperishable, how much more in perishable things ? Augustin ap. Gratian I. Dist. VIII. c. 1 ; Gregory Caus. XII. Qu. I. c. 8 in Baeda I. 27 ; Pseudo-Isidor. *Ibid.* c. 2 : The common life is necessary for all, and chiefly to those who desire to serve God free from blame. Concil. Paris A.D. 829, *Ibid.* c. 16 ; Concil. Aurel. A.D. 511, *Ibid.* Caus. XVIII. Qu. II. c. 16 ; Egbert's Excerpt. 62 ; Concil. London A.D. 1075, Can. 2 ; Baeda IV. 23, A.D. 731, says that in Hilda's monastery, " after the example of the primitive Church, no person was rich and none poor." Concil. Westminster A.D. 1200, Can. 15.

(185). 1 Tim. vi. 18 ; Hieronym. ap. Gratian Caus. XII. Qu. I. c. 8.

(186). Concil. London A.D. 1175, Can. 10 : We forbid, under terror of anathema, monks or clerks to trade for gain.

(187). Const. 46 Langton, A.D. 1222.

(188). Const. 15 Boniface, A.D. 1261 ; Const. 20 Peckham, A.D. 1281 ; Const. 7 Stratford, A.D. 1343.

(189). Unknown author ap. Gratian Caus. XVI. Qu. I. c. 20.

(190). Concil. London A.D. 1175, Can. 10 ; Const. 46 Langton, A.D. 1222.

(191). Const. 40 Langton.

(192). Concil. Agath. A.D. 506, Can. 24 ap. Gratian Caus. XX. Qu. IV. c. 3 : It should also be a rule that monks be not allowed to leave the congregation for solitary cells, unless they be approved monks after completed labours, or those for whom, because of their infirmity, the severity of the

infirm (193). All, as being dead to this world, are accounted dead persons in law, and could formerly in this country neither own property (194) nor dispose of anything by will (195).

32. To ensure greater earnestness in and to give greater effect to their prayers (196), the diet of monks is ordered to be spare (197), and they are required to observe the regular fasts (198). The use of flesh is at all times forbidden except to the sick and infirm (199). They are prohibited from dining

rule is relaxed by the abbot's permission. In that case, let them, whilst remaining within the cloister walls, and under the abbot's rule, be permitted to have separate rooms. An abbot, also, may not have several different rooms or several different monasteries. Concil. Lat. II. A.D. 1139, Can. 26 ap. Gratian Caus. XXVIII. Qu. II. c. 25.

(193). Const. 44 Langton, A.D. 1222. Let the fare of all in the refectory be the same. The head of the house may have such provision prepared for him as he sees proper for the relief of the sickly.

(194). Const. 46 Langton, A.D. 1222. 31 Hen. VIII. c. 6 first enabled a monk to sue and be sued in a court of law. It was confirmed by 33 Hen. VIII. c. 29, and explained by 5 and 6 Ed. VI. c. 13. See note 72.

(195). Gregory ap. Gratian Caus. XIX. Qu. III. c. 7 : It is laid down by clear title of law, that those who enter a monastery have no power of bequest. What they possess belongs to the monastery. Leo III. in Decret. Lib. III. Tit. XXXVIII. c. 2 directs that one-half the property of one who embraces religion shall go to the Church to which the monk belongs ; but Alexander III. *Ibid.* c. 4 restricts this rule to cases in which a person embraces religion when taken suddenly ill. In other cases the monk carries with him to the monastery his whole property. Const. 45 Langton, A.D. 1222.

(196). See *Baptism*, § 13, 21 ; *The Eucharist*, § 7.

(197). Concil. Chelsea A.D. 787, Can. 4 : That monks and nuns behave themselves regularly both as to diet and apparel.

(198). Concil. Turon II. A.D. 567, Can. 17 : From Easter until Pentecost, excepting the three rogation days, the brethren may dine. After Pentecost let them live on dry meats for a week, and then fast three days a week to the 1st August. In August, because saints' days occur daily, let them dine. In the whole of September, October, and November let them fast three days a week, and every day from December to Christmas. From Christmas day to Epiphany, because saints' days occur daily, let them dine, excepting the three days on which litanies are said for the extirpation of paganism. From Epiphany to Lent let them fast three times a week.

(199). Egbert's Excerpt. 69 : Let monks never have flesh in commons.

before the high noon office has been said (200), and are enjoined always to say grace before meals, and to give thanks afterwards (201). In the East, fasting was carried on with much greater severity than in the West (202).

33. In respect of dress they are directed to wear a distinctive habit (203), differing from that of secular clergy both in shape and colour (204). Neither monks nor canons regular may wear linen shirts (205), nor an outer garment of shaded brown (206), nor girdles of silk, nor gold or silver ornaments (207), nor caps (208). Each one's habit must be proportioned to his height (209). Whereas secular clergy may wear any colour

Animals, either young or full-grown, may never be served up at the table in the congregation. They may be provided and eaten by them that are infirm only. Const. 19 Otho, A.D. 1237: According to the rule of St. Benedict, monks ought to abstain from eating flesh excepting the weak and infirm.

(200). Martin Brac. ap. Gratian I. Dist. XLIV. c. 12: Nec oportet clericos vel laicos religiosos ante sacram diei horam tertiam inire convivia. Concil. Clovesho A.D. 747, Can. 21.

(201). Martin Brac. l. c.

(202). See note 19.

(203). Concil. Aurel. A.D. 511, Can. 20, forbids monks to wear a stole (orarium) or beaked shoes, called tzangae, zancae, chyncae, ciangae. Concil. Clovesho A.D. 747, Can. 19: Let them not use gorgeous apparel or such as savours of vainglory, like seculars, but a simple habit, and such as agrees with their profession. Can. 28: Let them use the accustomed apparel. Concil. Ensham A.D. 1009, Can. 1; Clemens III. in Decret. Lib. III. Tit. XXXI. c. 13: The habit does not make the monk, but a regular profession. Const. 40 and 44 Langton, A.D. 1222.

(204). Concil. Clovesho A.D. 787, Can. 4 in H. and S. III. 450: Let the monks use the habit that the Easterns [monks of Italy and Germany, Stubbs III. 460] do, and the canons also, and not garments dyed with Indian tinctures or costly. Elfric's Can. 36, A.D. 957: Let every one wear what belongs to his order, the priest that to which he was ordained, and let him not wear a monk's shroud, nor that which belongs to laymen.

(205). Innocent III. in Decret. Lib. III. Tit. XXXV. c. 6.

(206). Const. 36 Langton, A.D. 1222: Let neither monks nor canons regular use burnet nor any irregular cloth.

(207). Const. 36 Langton, A.D. 1222.

(208). Concil. Westminster, A.D. 1200, Can. 15.

(209). Const. 36 Langton, A.D. 1222.

excepting red, green, or purple ([210]), monks are, by English rule, confined to a black or a white habit, with black or white facings either of cats' skins, lambs' skins, or foxes' skins ([211]), and a monk discarding his habit is ordered to be treated as one excommunicate ([212]).

34. By the vow of chastity monks are pledged not merely to live a temperate life, but for the kingdom of heaven's sake to refrain from marriage altogether ([213]). To avoid temptation they are forbidden to employ women to manage their households ([214]), to go out alone ([215]), or after dark without a light ([216]), to wander about ([217]) or frequent

(210). Concil. Lat. IV. Can. 16 in Decret. Lib. I. Tit. XV. See *Duties of Order*, § 8.

(211). Concil. Westminster, A.D. 1200, Can. 15; Eunapius in Vita Aedesii says that: Every man who then [in the fifth century] wore a black garment [*i.e.*, a monk] exercised a tyrannical authority.

(212). Concil. Winton A.D. 1071, Can. 12: That monks who have thrown off their habit be neither admitted into the army nor into any convent of clerks, but be esteemed excommunicate.

(213). Matt. XIX. 13; Concil. Ensham A.D. 1009, Can. 1: Let the monk that hath no monastery engage himself before God and man to observe three things, at least for the time to come, *i.e.*, his chastity, the wearing of the monastic habit, and the serving the Lord in the best manner that he can. Const. 11 Peckham, A.D. 1279: That friars and nuns rigidly preserve their chastity.

(214). Concil. Turon. II. A.D. 567, Can. 16, forbids women to enter a monastery, and excommunicates an abbot or provost who permits this rule to be infringed. Gregory ap. Gratian Caus. XVIII. Qu. II. c. 20. See notes 42 and 81.

(215). Const. 43 Langton, A.D. 1222: Nor may the religious go out except leave be given for some reasonable cause, nor even visit their parents unless they are such as are liable to no just suspicion, and not even then without a mate.

(216). Concil. London A.D. 1075, Can. 2: That all of them carry lights by night.

(217). Concil. Chalcedon A.D. 451, Can. 23 ap. Gratian Caus. XVI. Qu. I. c. 17; Pelagius *Ibid.* c. 18; Wihtraed's Dooms 8, A.D. 696: If a shorn man irregularly wander about, entertainment may be given him for once, but let him not be entertained for any long time unless he have a license. Can. 6 Odo, A.D. 943: Let monks not be strollers and saunterers. Alexander II. ap. Gratian Caus. XVI. Qu. I. c. 11.

towns ([218]) or attend wedding-feasts ([219]), to be placed singly in charge of parishes ([220]), to visit nunneries except for necessary business ([221]), or stay at laymen's houses ([222]), or to act as god-parents ([223]).

35. Originally monks were the voluntary subjects of the abbot in whose monastery they were staying ([224]), and took no vow of obedience. In the fifth and following centuries wandering monks were looked upon with disfavour ([225]). St. Benedict's rule required a vow of obedience. It gave to monks in return the power of electing their abbot ([226]), but did not empower them to dismiss him ([227]). Obedience was held to extend to all matters ([228]) short of transgressing a divine

(218). Hieronym. ap. Gratian Caus. XVI. Qu. 1. c. 5 : If you wish to be what you are called—a monk, what have you to do in towns? Concil. Augustodun. A.D. 670, Can. 6.

(219). Concil. Autissiodor. A.D. 578, Can. 24.

(220). Concil. Lat. III. A.D. 1179, in Decret. Lib. III. Tit. XXXV. c. 2, and Tit. XXXVII. c. 3 and 4 ; Concil. Westminster A.D. 1200, Can. 5 ; Innocent III. *Ibid.* Tit. XXXV. c. 5 ; Honorius III. *Ibid.* Tit. XXXVII. c. 3 and 4.

(221). Concil. Clovesho A.D. 747, Can. 20 ; Syn. VII. A.D. 787, Can. 20 ap. Gratian Caus. XVIII. Qu. II. c. 21 : Let not a monk sleep in a nunnery nor have a meal alone with a nun ; and when the necessaries of life are carried to the nuns by men, let the abbess receive them outside the gate, together with some very ancient woman. Const. 42 Langton, A.D. 1222.

(222). Concil. Clovesho A.D. 747, Can. 29 : That monks and nuns may not dwell in the houses of seculars with laymen.

(223). Concil. Autissiodor. A.D. 578, Can. 25 ; Concil. Augustodun. A.D. 670, Can. 5 ; Concil. Westminster A.D. 1102, Can. 19.

(224). Lingard's Anglo-Saxon Church I. 149. See § 15.

(225). Concil. Venet. A.D. 465, Can. 5, forbids them to wander without letters, testimonials. Concil. Agath. A.D. 506, Can. 38 ; Concil. Aurel. A.D. 511, Can. 19 ; Wihtraed's Dooms 8, A.D. 696 ; Concil. Ensham. A.D. 1009, Can. 1.

(226). Lingard I. 209 ; Concil. London A.D. 1075, Can. 2 : That monks observe their order according to the rule of Benedict. See note 85.

(227). Pelagius ap. Gratian Caus. XVIII. Qu. II. c. 9.

(228). Concil. Aurel. A.D. 511, Can. 19 ; Concil. Augustodun. A.D. 670, Can. 8 ; Concil. Hertford A.D. 673, Can. 4 ; Egbert's Excerpt. 62 : Let monks be subject to their abbots with a most devout obedience. Concil. Clovesho A.D. 747, Can. 19 : That monks or nuns be humbly subject to their superior. Odo's Can. 6, A.D. 963 : We exhort monks that in

command (229). Monks are also enjoined to observe the rule of silence, according to ancient custom (230); silence, or the power to withdraw, being a necessary mark of self-control (231).

## Communities of Religious Women or Nuns.

36. The term nuns is applied to all religious women who consecrate their lives to the service of Christ by a simple vow of self-dedication, or renounce the world by solemnly undertaking to observe the counsels of perfection (232). It includes (1) ordinary nuns or canonesses, who correspond with the widows of ancient times, and (2) cloistered nuns or minikins, who correspond with the consecrated virgins of St. Augustin's and earlier times (233). The latter represent the feminine side of monasticism, and follow either the rule of St.

humility and obedience they study night and day to perform their vows. Innocent III. in Decret. Lib. III. Tit. XXXI. c. 16.

(229). Gregory ap. Gratian Caus. II. Qu. VII. c. 57 : That subjects be not obedient beyond what is right (plus quam expedit), lest in studying to be obedient beyond what is necessary they are obsequious to the vices of others.

(230). Innocent III. in Decret. Lib. III. Tit. XXXV. c. 6; Const. 43 Langton, A.D. 1222.

(231). Gasquet in Montalembert's Monks of the West : A life of silence. What a power does this give him [the monk] over the man of the world, who is, perhaps, the very slave of the little pleasures, the frivolous vanities, the busy interests, the all-engrossing ambitions which the monk leaves and ignores. The power to withdraw is a mark of strength, and we worship strength in spite of ourselves. The man who can show himself perfectly independent places himself in a position of superiority.

(232). Nonna in Hieronym. Ep. 18 ad Eustoch. ; *νονίς* in Palladii Hist. Lausiaca c. 46, the feminine for Nonnus, according to Arnobius, junr., in Ps. CV. and CXL. = Egyptian for holy ; according to Jablonski, properly Nueneh = not of this world, *i.e*, one who has renounced the world.

(233). Sanctimoniales or Moniales ap. Gratian Caus. XX. Qu. I. c. 13, Caus. XXVII. Qu. 1. c. 13 ; Concil. Lat. II. A.D. 1139, *Ibid* Caus. XVIII. Qu. II. c. 25 ; Const. 18 Peckham, A.D. 1281 ; Lingard's Anglo-Saxon Church, I. 215 ; II. 12 ; Devoti Lib. I. Tit. IX. § 17. See *Duties of Order*, § 48.

Benedict or St. Basil. Observers of St. Basil's rule were in this country very rare (234).

37. Ordinary nuns or canonesses, whether professed or non-professed, are required to lead a regular life (235), like canons regular, and to observe chastity (236), as the spouses of Christ (237); otherwise they are not confined to their convents (238). They are, however, forbidden to wear sables or gaudy apparel (239), to let their convents be haunts of laymen (240), to occupy private rooms in them (241), to walk out alone (242) or without

(234). Lynd. 213.

(235). Concil. Clovesho A.D. 747, Can. 19: That monks and nuns be humbly subject to their superior, and lead a quiet, regular life. Concil. Chelsea A.D. 787, Can. 4: That monks and nuns behave themselves regularly. Concil. Ensham A.D. 1009, Can. 1; Cnut's Law 6, A.D. 1017.

(236). Const. 11 Peckham, A.D. 1279; Const. 17 Peckham, A.D. 1281.

(237). Innocent A.D. 404, ap. Gratian Caus. XXVII. Qu. I. c. 10: Quae Christo spiritualiter nubunt. Concil. Chelsea A.D. 787, Can. 16.

(238). Concil. Paris A.D. 615, Can. 13 ap. Gratian Caus. XXVII. Qu. I. c. 7, speaks of the assumption of the religious habit *in domibus propriis.* Syn. Rom. A.D. 826, *Ibid.* c. 31: Let women, veiled with a view to religion, either live regularly in a convent or chastely keep the habit they have taken at home.

(239). Cyprian de Vest. Virg. c. 5: If virginity is destined for the kingdom of God, what have they to do with earthly dress and with ornaments? Concil. Clovesho A.D. 747, Can. 19; Concil. Westminster A.D. 1127, Can. 10: That no abbess or nun use more costly apparel than such as is made of lambs' or cats' skins. Concil. Westminster A.D. 1138, Can. 15: We forbid nuns, under pain of anathema, to use particoloured furs, sable, martin, ermine, beaver, or golden rings, or to wreathe or curiously plat the hair. Concil. Westminster A.D. 1200, Can. 15: Const. 36 Langton, A.D. 1222: We decree that nuns and other religious women wear no silk veils, nor needles of silver or gold in their veils.

(240). Concil. Rothomag. A.D. 650, Can. 10, forbids any but bishops to be admitted. Concil. Clovesho A.D. 747, Can. 20: Let not nunneries be places of secret meeting for filthy talk, drunkenness, and luxury, but habitations for such as live in continence and sobriety. Can. 29: That nuns may not dwell in the houses of seculars with laymen.

(241). Concil. Lat. II. A.D. 1139, Can. 26 ap. Gratian Caus. XVIII. Qu. II. c. 25.

(242). Const. 18 Peckham, A.D. 1281.

the abbess or prioress ([243]), to act as godmothers ([244]), or even to stay for any length of time in the houses of their parents and friends ([245]). If they marry, they are looked upon as incontinent rather than as adulteresses ([246]); and to those offering violence to their persons, Christian burial is denied ([247]).

38. Minikins, as their name implies, are feminine monks ([248]) who are confined to their monasteries ([249]), and called cloistered nuns. Those having houses in a cathedral city are usually

(243). Concil. Ebor. A.D. 1195, Can. 15 : That nuns do not go out of the verge of their convent but in the company of the abbess or prioress.

(244). Concil. Westminster A.D. 1102, Can. 19.

(245). Const. 18 Peckham, A.D. 1281 : We forbid any nun under pain of excommunication to stay, even in company with a sister nun, much less without it, in the house of her parents or relations . . . above three natural days, for the sake of change, nor above six on any occasion except sickness.

(246). Hieronym. adv. Jovinian ap. Gratian I. Dist. XXVII. c. 9 : Non tam adulterae quam incestae. *Id.* Ep. 97 (al. 8) ad Demetriadem : The holy vow of virgins and the glory of the heavenly and angelic family is disgraced by some who do not conduct themselves properly. Such ought to be told plainly either to marry if they cannot contain, or to contain if they do not wish to marry. Augustin de Bono Viduit. c. 10 : They who say that the marriages of such are not marriages but adultery, do not seem to me to consider with sufficient accuracy and care what they say. For no little harm is done by this ill-considered opinion that the marriages of such women as fall away from the holy vow are not marriages, so that they ought to be separated from their husbands as very adulteresses, and not wives ; for by separating them they make the husbands real adulterers if they should marry other women during the lifetime of their first wives. Concil. Chalcedon A.D. 451, Can. 16 forbids a monk or consecrated virgin to marry ; but if they do, allows the bishop of the place to be indulgent towards them. Odo's Can. 7, A.D. 943 : We forbid all incontinent marriages with nuns . . . for Pope Gregory [II. A.D. 721] . . . ordained, If any one marry a nun, let him be anathema. See *Excesses*, § 33.

(247). Edmund's Law 4, A.D. 944 : Let him that defiles a nun be unworthy of a consecrated burial-place. Concil. Tribur. A.D. 895, ap. Gratian Caus. XXVII. Qu. I. c. 13, requires him ever to lament it. *Ibid.* c. 37 ; Can. 23, *Ibid.* c. 17 orders excommunication. Const. 17 Peckham, A.D. 1281.

(248). Concil. Ensham. A.D. 1009, Can. 1 ; Cnut's Law 6, A.D. 1017.

(249). Boniface VIII. in Sext. Lib. III. Tit. XVI. c. 1 ; Devoti Inst. Lib. I. Tit. IX. § 18.

under the bishop's rule (250); those elsewhere are mostly under the rule of some religious house of their own order (251). To avoid scandal, they are forbidden to have their convents adjacent to those of men, so as to form double monasteries (252), or to sing in the same choir with monks (253). Cloistered nuns are allowed to receive the Eucharist in their own oratories on principal festivals, as well as at other times (254), and to have a confessor appointed by the bishop (255); but neither clergy nor youthful monks, nor others than those of approved life, may be admitted within the convent walls (256).

39. Girls placed in a convent by their parents in tender years are at liberty to decide, when they reach their fifteenth year (257), whether they will remain or not. A girl under twelve spontaneously taking the veil may not afterwards withdraw (258), but she may be withdrawn by her friends, provided this is done within a year (259). Should she herself withdraw and marry, she is enjoined to do penance as one guilty of bigamy (260);

(250). Concil. Arelat. v. A.D. 554, Can. 5: That bishops have charge of the monasteries of nuns in this city, and that abbesses have no power of acting contrary to rule.

(251). Concil. Hispal. II. Can. 11, A.D. 619; Lynd. 212: In England, for the most part, nuns under the rule of the religious are cloistered (inclusae); those which are under the bishop are not cloistered.

(252). Concil. Agath. A.D. 506, Can. 28 ap. Gratian Caus. XVIII. Qu. II. c. 23, says, "because of the wiles of the devil or the tongues of men." Euseb. II. 17 mentions double monasteries in Egypt, but Syn. VII. A.D. 787, Can. 20, *Ibid.* c. 21, condemned them. See notes 41, 81, 214.

(253). Concil. Lat. II. A.D. 1139, Can. 27, *Ibid.* c. 25.

(254). Cap. 45 Theodulf, A.D. 994: We charge men of every rank to frequent the high mass, except the holy maidens only whose custom or manner it is not to go from their own minster.

(255). Const. 42 Langton, A.D. 1222: Let the nuns make confession to priests appointed by the bishop.

(256). Concil. Epaon. A.D. 517, Can. 38; Concil. Matiscon. I. A.D. 581, Can. 2; Concil. Rothomag. A.D. 650, Can. 10; Const. 42 Langton, A.D. 1222.

(257). Concil. Mogunt, A.D. 813, Can. 23 ap. Gratian Caus. XX. Qu. l. c. 10: Gregory, writing to Augustin of Canterbury, *Ibid.* c. 2, held otherwise.

(258). Leo ap. Gratian Caus. XX. Qu. l. c. 8; Concil. Tolet. VI. A.D. 638, Can. 6, *Ibid.* Qu. III. c. 2.

(259). Concil. Tribur A.D. 895, Can. 24, *Ibid.* Qu. II. c. 2.

(260). Syn. Rom. ad Gall. A.D. 384, Can. 2; Innocent ap. Gratian Caus. XXVII. Qu. l. c. 9; Concil. Turon. II. A.D. 567, Can. 20; Can. 36 Dunstan,

and should she withdraw after being solemnly veiled, to be excommunicated (261), as guilty of incest (262). No novice may be received into a religious house for money (263).

40. By the rule of the fourth century a virgin might not be consecrated under twenty-five years of age (264), nor a canoness under forty (265), and an abbess was required to be sixty years of age before appointment (266). The consecration or veiling of a nun should be performed by the bishop (267), or else by a presbyter with his authority, but not by an abbess (268). It should be preceded by a novitiate of one year for a cloistered

A.D. 963: If a religious woman turn herself to secular vanity . . . and thinks with her wealth to make satisfaction, this will be vain.

(261). Syn. Rom. ad Gall. Can. 1; Innocent I. ap Gratian 1. c. c. 10; Concil. Chalcedon A.D. 451, Can. 16, *Ibid.* c. 26; Concil. Aurel. V. A.D. 541, Can. 19: If afterwards leaving the hallowed precincts they give up their holy purpose from love of the world, or those who at their own homes have either as virgins or widows adopted the habit of conversion, let them be deprived of communion, together with those whom they have married. Concil. Paris III. A.D. 557, Can. 5; Concil. Turon II. A.D. 567, Can. 20; Concil. Martin. Brac. A.D. 572, *Ibid.* c. 26; Concil. Matiscon. I. A.D. 581, Can. 12; Concil. Lugdun. III. A.D. 583, Can. 3; Concil. Paris V. A.D. 615, Can. 13.

(262). Concil. Ancyr. A.D. 314, Can. 18 ap. Gratian 1. c. c. 24, *Ibid.* c. 21, says she is worse than an adulteress. Leo, A.D. 459, *Ibid.* Caus. XX. Qu. 1. c. 3. See note 246, and *Duties of Order*, notes 320 and 323.

(263). Concil. Westminster A.D. 1127, Can. 3; Concil. London A.D. 1175, Can. 8.

(264). Concil. Carthag. III. A.D. 397, Can. 4 ap. Gratian Caus. XX. Qu. 1. c. 14, *Ibid.* c. 15; Concil. Turon. II. A.D. 567, Can. 20; Egbert's Excerpt. 91. See *Duties of Order*, note 321.

(265). Concil. Agath. A.D. 506, *Ibid.* c. 13: This was the rule for deaconesses by Concil. Chalcedon, Can. 15. See *Duties of Order*, § 49.

(266). Gregory *Ibid.* c. 13.

(267). Concil. Carthag. II. A.D. 390, Can. 3 ap. Gratian Caus. XXVI. Qu. VI. c. 1.

(268). Concil. Paris VI. A.D. 829, ap. Gratian Caus. XX. Qu. II. c. 3: If an abbess has the presumption either [to receive] a widow or veil a girl a virgin, let her be subject to canonical judgment until satisfaction. Innocent III. in Decret. Lib. V. Tit. XXXVIII. c. 10: We hear that in some dioceses abbesses bless their own nuns, hear their confessions, read the Gospel, and publicly preach. . . . Forbid its being done in future, for although the blessed Virgin was more honoured than all the apostles, yet to them and not her were given the keys.

nun, and of three years for a canoness (269). In taking the veil the nun is first attired in the habit of her order (270), her head being covered with a large altar-cloth or veil (271); a written profession then is handed in by her and laid upon the altar (272), after which she receives the blessing (273). In the thirteenth century it was ruled that those who had worn the religious habit for a year should be deemed to be professed, so far at least as to be under all the obligations of the rule (274).

41. The veiling of nuns is directed to take place only at Easter, the Epiphany, or on the festival of some apostle, except by urgent request to avoid dishonour, or when death seems impending (275). Once veiled a nun may not migrate to another house, except to embrace a stricter rule (276). Spanish custom required the queen-dowager, on her husband's death, at once to enter a convent of canonesses (277), and the Gallican rule required the same from the widows of clergy (278).

(269). Concil. Aurel. v. A.D. 541, Can. 19: Let them remain a year in the lay garb, but in monasteries where the nuns are not cloistered three years.

(270). Stat. Eccl. Ant. A.D. 505, Can. 11 ap. Gratian I. Dist. XXIII. c. 24: When a holy virgin is presented to the bishop for consecration, let her be vested in the usual garment suited for her profession and holiness.

(271). Concil. Tolet. X. A.D. 656, Can. 5 ap. Gratian Caus. XXVII. Qu. I. c. 36: Pallio capita sua contegant, and Caus. XX. Qu. I. c. 11 and 13. The service of veiling is described in Lingard's Anglo-Saxon Church II. 12. See note 123.

(272). Concil. Tolet. X. A.D. 656, Can. 5.

(273). Cap. Reg. Franc. ap. Gratian Caus. XXVII. Qu. I. c. 37: Let all know that the bodies of holy women consecrated to God by the vow of their own undertaking and the priest's words [of prayer] are proved by Scripture testimony to be God's temples. Therefore the violators of them are known to be guilty of sacrilege, and to be sons of perdition.

(274). Const. 18 Peckham, A.D. 1281.

(275). Gelasius, A.D. 494, *Ibid.* Caus. XX. Qu. I. c. 11 and 15; Egbert's Excerpt. 90: The holy veil ought not to be put on virgins [or widows] devoted to God, except on the Epiphany, or Low Sunday, or on the nativity of an apostle, unless they be dangerously sick.

(276). Concil. Tribur. A.D. 895, *Ibid.* Caus. XX. Qu. IV. c. 1.

(277). Concil. Tolet. XIII. A.D. 683, Can. 5; Concil. Caesaraugust. III. A.D. 691, Can. 5.

(278). See *Duties of Order*, § 42; *Wedlock*, § 15.

# IV.

# RELIGIOUS ORDERS.

## Origin of Religious Orders.

1. A religious order is the name applied to a group of associated communities or an aggregate of affiliated congregations, either of monks, regulars, or friars, which are united under a common head and hierarchy of their own, and are exempted from the ordinary territorial jurisdictions, being governed by laws of their own. Since the time of the Fourth Lateran Council, in 1215 A.D., when the consolidation of all the then existing monastic congregations was enjoined (1), and the establishment of any new rule was forbidden (2), centralised religious orders have succeeded to the place formerly occupied by isolated congregations.

2. The religious orders which are most widespread and best known may be grouped under four different classes, according to the objects which they have primarily set themselves to attain (3),

(1). Decret. Lib. III. Tit. XXXV. c. 7; Const. 16 Peckham, A.D. 1281: We have found that many religious houses of the order of St. Augustin do not meet with the rest in their general chapter held every third year, according to the General Council. Lynd. 213.

(2). Concil. Lat. IV. A.D. 1215, in Decret. Lib. III. Tit. XXXVI. c. 9: Lest a too great diversity of religions [rules for the religious life] should introduce confusion into the Church of God, we forbid that any one in future should invent a new religion, but whoever wishes to be converted to religion, let him embrace one of the approved [rules]. Similarly, he who would in future found a new religious house, let him take the rule and appointment of it from the approved [forms]. We altogether forbid any man having a monk's place in different monasteries, or one abbot presiding over several monasteries. Const. 31 Edmund, A.D. 1236; Const. 9 Mepham. A.D. 1330; Boniface VIII. in Sext. Lib. III. Tit. XV. c. 1.

(3). Lynd. 214: Some religious orders are founded principally for works of the contemplative life, which consists in study and prayer, as the order of the Carthusians. The aim of other orders is to wait on hospitality and the sick, as the Cross-bearers and the brethren of St. Antony of Vienne.

viz. (1) those whose object is the worship and service of God by the contemplative life, and a closer union with God by knowing Him and forgetting or ignoring themselves (4), such as the followers of St. Basil and St. Benedict; (2) those whose object is to serve God by active life, by exercising hospitality, caring for the sick and for strangers, and protecting pilgrims, such as the Hospitallers and Templars; (3) those whose object is to deepen and intensify the spiritual life of their brethren living in the world, and to teach them habits of self-denial by precept and example, such as the Friars; and (4) those whose aim is to spread the faith abroad or at home, such as the various missionary orders of mediaeval and post-mediaeval times.

### Contemplative Orders of Laymen.

3. The parent rule of all contemplative orders is that of St. Basil, but the parent society of all the monastic communities at present existing in the West (5) is the congregation founded by St. Benedict of Nursia at Monte Casino, in the year 529 A.D. (6). This congregation has, by the foundation of a number of houses which have in the main followed its rule, given rise to a variety of orders, of which the best known are (1) the

Some orders exist for the sake of preaching doctrine and spiritual counsel, such as the Friars-Preachers, Minorites, Augustinian Friars, and Carmelites; other orders for military service, such as the Hospitallers, and formerly the Templars.

(4). John xvii. 3: This is life eternal, to know Thee the only true God, and Jesus Christ whom Thou hast sent. Cassian Collat. ix. 31 goes so far as to say: Prayer is not perfect in which a monk either understands himself or understands what he prays.

(5). The rule is in seventy-seven chapters, and requires three virtues—silence, humility, obedience, and prescribes three occupations—worship, reading, and manual labour.

(6). Benedict, born at Nursia A.D. 480, retired when seventeen to the desert of Subiaco, and lived for three years in a pit, fed by the monk Romanus. He converted the temple of Apollo at Monte Casino into an oratory, and established a congregation there, A.D. 529, and died 543. Elfric, Can. 34, A.D. 957: Monks observe the rule of one man, Benedict, and live by his direction. Concil. London A.D. 1075, Can. 2: That monks observe their order according to the rule of Benedict.

Black monks (7), or Benedictines proper; (2) the Cluniacs, Camaldunians, or Romaldeans, and other local orders; (3) the Cistercians; and (4) the Carthusians.

4. From the time of St. Augustin's mission, in 597 A.D., there existed in this country, among the Saxons, monastic houses (8) following a rule sometimes called after St. Gregory the Great, the peculiar features of which are no longer known. There existed also before that time among the Celts, in the western parts of the islands, other religious houses, following an earlier and different rule. Many of these communities appear to have been somewhat secular in their habits, and to have lived an associated rather than a common life (9). About the year 780 another St. Benedict founded a new monastery at Aniane (10), in which he endeavoured to enforce the strict observance of St. Benedict's rule of a common life, and also to induce neighbouring monasteries to do the same. A century later King Alfred set to work to reform the existing English monasteries upon the new Benedictine pattern, and after him other sovereigns and archbishops attempted the same (11), but success was not permanently assured before the thirteenth century.

(7). Concil. Westminster A.D. 1200, Can. 15.

(8). Theodori Poenit. II. VI. in Haddan and Stubbs III. 195.

(9). Lingard, Anglo-Saxon Church I. 236. In Hist. Monast. de Abbendon II. 277, it is stated that Heane the founder had constructed twelve habitations for monks and twelve chapels; and, p. 272, there are said to have been twelve monks, so that each one had his own house and chapel. Not only the canons of the synods of Clovesho in 747 and 787 A.D., but the Constitutions of Langton seem to show that the inmates of monasteries often lived an associated but not a common life, having rooms of their own, and dressing as they pleased. See *Discipline of the Religious Life*, note 240.

(10). Born A.D. 750, in Languedoc; died A.D. 821, as abbot of Inda near Aix-la-Chapelle.

(11). Dunstan, circa 963 A.D. For instance, Hist. Monast. de Abbendon II. 279 says that in the time of St. Ethelwold, A.D. 1000, the religious life was corrupted by the incursions of the Danes and the austerity of the [new] Benedictine rule, so that hardly any but a poor man could become a monk. Therefore, St. Ethelwold, to attract the rich, did away with all the requirements not contained in St. Benedict's rule. Lanfranc, A.D. 1072, again introduced reform. Const. 19 Otho, A.D. 1237, orders the Benedictines to abstain from eating flesh, in accordance with the decretal of Innocent III. in Decret. Lib. III. Tit. XXXV. c. 6.

5. The order of the Benedictines, or Black monks as they were generally called, has been described as "an organisation diverse, complex, and irregular, rich rather than symmetrical, with many origins and centres and new beginnings, and the action of local influences" (12), which insisted upon common rather than associated religious life, combined active labour with prayer and contemplation (13), cultivated learning, and insisted upon entire self-surrender and obedience. Wherever the order established itself, it made the wilderness flourish like a garden, and brought untold blessings alike to the bodies and the souls of men. Whatever knowledge of agriculture, science, language, or philosophy the modern world has inherited from the old world, it owes mainly to the labours and industry of the cloistered Benedictines. The great Benedictine abbeys of this country were Westminster, Glastonbury, Bury St. Edmunds, Evesham, and St. Mary of York; and in the West of England, Tavistock and Bucfast (14). There were also twelve cathedral priories which were Benedictine foundations, of which Canterbury was the chief (15), and many other collegiate priories (16), such as Exeter and Crediton, and of later foundation, Ottery St. Mary.

6. The reformed Benedictine rule not being found sufficiently strict to satisfy the religious zeal of all, severer rules were devised for new congregations which sprung up in the tenth and eleventh centuries. Such was (1) the rule of Clugny, a

(12). Newman, quoted by Gasquet in Montalembert's Monks of the West.

(13). Lynd. 214 says that a man must be perfect in active life in order to be perfect in contemplative life. See *Discipline of the Religious Life*, note 12.

(14). Oliver's Monasticon, p. 90. Bucfast was subsequently refounded as a Cistercian house in 1137 A.D. See J. Brooking Rowe in Trans. Devon. Association VIII. 809.

(15). Viz., Canterbury, Winchester, Durham, Ely, Worcester, Norwich, Rochester, Bath, Coventry, Peterboro' or Medeshampstead, Gloucester, and Chester.

(16). There were in Devonshire, Otterton, Totton or Totnes, Pilton, Modbury, Cowick near, and St. Nicolas in Exeter, and Polsloe for nuns. See Dugdale, Monasticon I. 1039.

French congregation established by St. Benno at Clugny, near Mâcon, in the year 909 A.D. (17). The Cluniacs, in addition to many other points of discipline, made it a duty to recite psalms whilst they were at work; to keep open hospitality daily for the poor, needy, and travellers; and to make their Churches palaces for the poor. More than 2000 houses were affiliated under this rule before the thirteenth century, amongst those in this country being St. James', Exeter (18), St. Mary Magdalen, Barnstaple (19), and Carswell Priory in East Devon (20). Such was (2) the rule of Camaldoli, an Italian congregation founded at Campo Maldoli, near Florence, by St. Romuald, in 1009 A.D. The Camaldunians, or Romaldeans as they were also called, dwelt in separate cells, and met together only for prayers. Some of them observed an inviolable silence during the two Lents, others during one hundred days in each year. On Sundays and Thursdays their diet consisted of herbs, on other days of bread and water. In the seventeenth century they were divided into five congregations, with about 2000 members (21). Outside Italy they had few houses, and in this country none. Such were also the rules of (3) the Cistercians and (4) the Carthusians.

7. The Cistercians (22), usually called White monks, because, like the Camaldunians, they wore a white habit with a black

(17). Lorain L'Abbaye de Clugny (Dijon, 1839).

(18). Fehr Geschichte der Mönchsorden I. 68.

(19). Oliver, Monasticon Exoniense 191.

(20). *Ibid.* 196.

(21). *Ibid.* 311.

(22). Alexander III. in Decret. Lib. III. Tit. XXXV. c. 3, complains that many Cistercian foundations, against the rule of their order, possess village lordships (villas), churches, and altars, and undertake liegeships and homages, and hold courts for justice and tribute, . . . and exhorts them to be content with their ancient allowances. *Id. Ibid.* Tit. XXXI. c. 7 forbids Cistercians to be received in other monasteries without the consent of their abbots. Concil. Lat. IV. *Ibid.* Tit. XXXV. c. 37 directs Cistercians, as being experienced in the ordering of congregations, to preside in the general chapters for consolidating monastic congregations. Const. 22 Othobon, A.D. 1268, requires them to appoint perpetual vicars wherever they have Churches.

scapular and hood, were founded by Robert of Molesme, at Citeaux, near Châlons, in 1098 A.D. Their co-founder was the Englishman Stephen Harding, who, in 1119 A.D., devised the rule of the Annual Chapter (23), afterwards adopted by all the other orders, and the Chart of Charity. After the election of St. Bernard to the abbacy of Clairvaux, in 1115 A.D., the Cistercians became famous throughout Europe, and within one hundred years had 1800 affiliated houses. They are sometimes called the spoiled children of the Apostolic See. The earliest Cistercian house in this country was founded at Waverley in Surrey, in 1128 A.D., by Walter Giffard, Bishop of Winchester. Others soon followed, and at the time of the dissolution the Cistercians had one hundred and one houses in the kingdom (24), amongst others the great houses of Ford (25), Dunkeswell (26), Newenham (27), and Buckland (28), in Devon. In sacred things the Cistercians were distinguished for eschewing all colour and ornament; they were also more conservative than others of the traditional forms of service (29). A branch of them, of increased severity, was established in 1663 A.D., by the Abbé Armand de Rancé, at La Trappe or the Pond, who take from thence their designation of Trappists.

8. The Carthusians were originally founded at La Chartreuse, in 1086 A.D., by St. Bruno of Cologne, and slowly increased until, in 1258 A.D., they had fifty-six houses. Papal recognition was accorded to them by Alexander III. in 1174 A.D., and

(23). The rule and the Chart of Charity were approved by Calixtus II. in 1139.

(24). 27 Hen. VIII. c. 28 gave to the king all monasteries having lands under £200 a year. 31 Hen. VIII. c. 13 gave him the larger abbeys. See Gasquet's Henry VIII. and the English Monasteries.

(25). Oliver 338; Hook's Lives II. 542.

(26). *Ibid.* 393; J. Brooking Rowe in Trans. Devon. Assoc. IX. 382.

(27). *Ibid.* 357; Trans. Devon. Assoc. IX. 361. Founded 1245, by William de Mohun.

(28). *Ibid.* 330; Trans. Devon. Assoc. VII. 329; VIII. 797.

(29). Lynd. 9 states that it was the custom of the Cistercians to give the cup to the people in lesser Churches, but, according to ancient custom, first to mix with it unconsecrated wine.

their manner of life was introduced into this country about 1180 by St. Hugh, afterwards Bishop of Lincoln, who established a Carthusian house at Witham, in Somerset (30). The celebrated Charterhouse in London was founded by Sir William Marney in 1371. At the dissolution the Carthusians had eleven houses in this country, and showed the finest examples of the martyr spirit (31). Until 1130 A.D. the order had no written rule. Then the fifth prior of the Chartreuse, Guigot by name, compiled the Carthusian Customs (*Consuetudines Cartusiae*), which have since been supplemented by the collected resolutions of general chapters. The peculiarities of the order are (1) the strict separation of the members from each other, to prevent even indirect contact with the world; (2) the separation of the professed brethren from the lay brethren or *conversi*, lay brethren in this rule holding a very inferior position; (3) the separation of each house from all contact with the neighbourhood; and (4) the separation of the order from contact with other monastic orders. For solitude, length of the night office, and scantiness of diet, this is the most austere order.

### Contemplative Orders of Clergy.

9. Canons is the name given to the clergy of a collegiate Church, either because they live according to rule (*κανών*), or else because they are on the roll of those supported by the Church (*ἐν τῷ κανόνι*) (32). Those living a common life under a rule are termed *regular* canons; those only associated in serving the same Church, but not living a common life, secular canons. Although regular canons are met with under that name in the eighth century (33), yet the origin of the order of regular canons

(30). Margaret Thompson, History of Somerset Carthusians; Hodges, 1895.

(31). Gasquet's Henry VIII. and the English Monasteries; Froude, Short Studies II. 95.

(32). Concil. Chalcedon A.D. 451, Can. 1.

(33). Concil. Chelsea A.D. 787, Can. 4: That bishops take care that canons live canonically—may refer to secular canons, but Chrodegang's canons at Metz were certainly regular canons.

called after St. Augustin is usually referred to Arnald, Odelo, Pontius, and Durandus, four canons of the Church of Avignon, who, in the year 1038 A.D., obtained permission to withdraw from active clerical work to lead an ascetic and contemplative life in retirement from the world (34). The name seems to have been first adopted by them after the Second Lateran Council, in 1139 A.D., to distinguish them from the regular canons of cathedral Churches, who followed Chrodegang's rule. In this country the first congregation of Augustinian canons was established at Colchester in 1105 A.D. Many others followed, and soon the Augustinians became a numerous body (35). At the dissolution they had 170 houses, amongst others Hartland Abbey (36), Plympton (37), Frithelstock (38), and Cornworthy (39) Priories, besides Canonsleigh Priory for canonesses (40). Their dress was a black cassock and white rochet, and over that a black gown and hood.

10. The Praemonstrants or Norbertines were an offshoot from the Augustinians, who followed a somewhat stricter rule. The first monastery of this order was established by St. Norbert, in 1120 A.D., at Prémontré in the Isle of France, and in 1146 their first monastery in this country was erected in Lincolnshire by Peter de Saulia. Their dress was white with a scapulary before the cassock, out of doors a white cloak and hat, and in Church a surplice. In mediaeval times their houses were the great seminaries of the clergy, and they alone among religious orders were eligible to have the charge of secular Churches. In the reign of Edward I. this order had twenty-seven monasteries in this country, amongst others Tor Abbey (41) in Devonshire, founded in 1196 A.D., and Dale Abbey in Derbyshire (42).

11. Another offshoot of the Augustinian rule were the Gilbertines, founded by St. Gilbert of Sempringham in Lin-

(34). See *Discipline of the Religious Life*, § 5.
(35). Dugdale's Monasticon VI. 37.
(36). Oliver's Monasticon Exoniense, 203.
(37). *Ibid.* 129. (38). *Ibid.* 219.
(39). *Ibid.* 236. (40). *Ibid.* 224.
(41). *Ibid.* 169. (42). Dugdale's Monasticon.

colnshire, about the year 1148 A.D. (43). St. Gilbert's original foundation was for poor maidens who were resolved to lead a life of chastity, and made vows of absolute seclusion. They were attended by a few servants, from whom they received all they required through a window. Similar institutions were soon erected in other places, and St. Gilbert requested Pope Eugenius III. to incorporate his foundations with the Cistercians. The scheme not finding favour at Rome, he was obliged to provide for the guidance of his congregations in another way, which he did by attaching a convent of canons to each nunnery, thus after the old English pattern creating double-monasteries—one division for men, the other for women, the two separated by a high wall. The men's monastery consisted of ten canons, together with a number of lay brethren, who followed the rule of Citeaux. The nuns were placed under the rule of St. Benedict; and hospitals for the poor, sick, widows, and orphans were connected with their regular establishments. At the time of the dissolution this order possessed twenty-one houses and eleven double-monasteries, but it was never propagated outside of this country.

### Charitable Orders.

12. Very different from the contemplative orders are the societies of active charity. Most of these existed as individual congregations, and never grew into distinct orders. Among such may be named the congregation of St. Antony at Vienne, founded by Gaston, in 1095 A.D., for the cure of the sick (44); the hospital at Montpellier, founded by Guido in 1178 A.D., and affiliated by Innocent III., in 1204, to the Hospital of the Holy Ghost at Rome (45); the order of St. Bridget of Wastena in Sweden (46);

(43). Holsten. Tom. II.; Hurter Innocenz III. und seine Zeitgenossen IV. 230.

(44). Giesseler III. 219. Lynd. 213 says that there was a house of St. Antony in London, a dependency of the house of St. Antony at Vienne, and that it conformed to the rule of St. Augustine.

(45). Hurter IV. 220.

(46). Lynd. 213 says that Sion House near London was a dependency of

the Trinitarians, founded in 1198 A.D., at Gerfroi, in the diocese of Meaux, by John de Matha, for the redemption of captives from the hands of the infidels (47); the lepers' house at Plympton (48), and the hospital of St. John at Exeter for the relief of the poor (49). There were nevertheless two which developed into important orders, viz., the Hospitallers and Templars (50).

13. The Hospitallers, or Knights of St. John of Jerusalem, were a society of knights who, in 1099 A.D., erected a hospital or guest-house (51) at Jerusalem for the reception of pilgrims and the care of the sick. When the kingdom of Jerusalem came to an end in 1291 A.D., they escaped to Cyprus, and afterwards settled in Rhodes. Driven from Rhodes in 1523 A.D., they settled in Malta, and in 1530 A.D. the island was ceded to them by Charles V. The Templars were an order of knights established in 1118 A.D., in the neighbourhood of the Temple at Jerusalem, to preserve the peace in the Holy Land, to protect pilgrims (52), and to secure the approaches and public roads from robbers. At the Council of Vienne, in 1311 A.D., the order was suppressed (53), on the insinuation that it had misused its

the order of St. Bridget in Sweden, but that it conformed to the Augustinian rule, and that he had himself seen and handled [A.D. 1429] a papal ordination making it independent of the mother-house of Wastena.

(47). Hurter IV. 213.

(48). Oliver Mon. 152. (49). *Ibid.* Mon. 300.

(50). Concil. Lat. III. A.D. 1179, in Decret. Lib. V. Tit. XXXIII. c. 3; Concil. Westminster A.D. 1200, Can. 14: We decree according to the tenor of the Lateran Council that no brothers Templars, Hospitallers, nor any religious whatsoever do receive tithes, churches, or any ecclesiastical benefices from a lay hand. Lynd. 214. The lands of the Hospitallers in England and Ireland were confiscated by 32 Hen. VIII. c. 24. See 2 Eliz. c. 7.

(51). Syn. Rom. A.D. 826, Can. 24, in Decret. Lib. III. Tit. XXXVI. c. 3, directs guest-houses to be provided by the care of the bishops in whose dioceses they are situated.

(52). Spelman Gloss. says that their vow was ut peregrinis tutum rederent iter Hierosolytanum venientesque exciperent hospitio.

(53). 17 Ed. II. St. III. A.D. 1324, gave their lands to the Hospitallers. Lynd. 352, 221.

position for its own aggrandisement, and that its members had been guilty of horrible crimes. The charges are now generally believed to have been invented as a pretext for despoiling it of its great wealth.

### Mendicant Orders.

14. A new class of orders appeared in the thirteenth century, a Western reproduction of the wandering ascetics of the East, with the rule of obedience and subordination to a central authority superadded. Orders of this class go by the name of Mendicant or Begging Orders, or Friars. Intermediate between cloistered monks and laymen, the Friars made it their business to supplement the shortcomings of the parochial clergy as teachers, and to raise the standard of Christian life by example. It was their rule to possess nothing, but to move about from place to place, preaching and teaching, and to be content with whatever might be given them. Two of these orders had the privilege of being allowed to beg conferred upon them (54), viz., the Dominicans or Friars Preachers, and the Franciscans or Minorites (55); two others were allowed to exercise it because they were already existing before the Lateran decree forbidding new orders was passed (56), viz., the Carmelites and Austin Friars (57).

15. The Dominicans or Preaching Friars, commonly called Black Friars, because, over a white garment and scapular, they wore a black mantle and hood, and in France called Jacobins, because their convent was situated in the Rue St. Jacques, were founded by the Spaniard, St. Dominic, at Toulouse, in 1215.

(54). Lynd. 289.

(55). Concil. Lugdun. II. A.D. 1274, in Sext. Lib. III. Tit. XVII. c. 1, § 2, calls them Praedicatorum et Minorum ordines. Alexander IV. *Ibid.* Tit. XIV. c. 2 forbids a shorter novitiate than one year. Lynd. 344.

(56). Concil. Lat. IV. in Decret. Lib. III. Tit. XXXVI. c. 9; Const. 31 Edmund, A.D. 1236.

(57). Concil. Lugdun. II. l. c. calls them Eremitarum sancti Augustini et Carmelitarum ordines.

Their rule was formed by combining the rule of St. Augustine with divers constitutions borrowed from the Carthusians. The aim of the order was the conversion and refutation of heretics by preaching, the pursuit of learning, and austerity of life. In 1221, Gilbert du Fresney, with twelve brethren, founded the first house of the order in this country at Oxford, and soon after another in London. At the house in Holborn two general chapters were held, in 1250 and 1263 A.D., the latter being attended by St. Thomas of Aquinum. In 1276 A.D., the mayor and aldermen of London gave to the order two streets between Ludgate and the Thames, still called after them Blackfriars; and on the site of the present *Times* office their general chapters were held in 1314 A.D. and 1335 A.D. The Dominicans had monasteries at Warwick, Canterbury, Chelmsford, Ipswich, Norwich, Exeter (58), and other places, and numbered fifty-two priories and two subsidiary houses in England and Wales at the time of the dissolution.

16. The rivals of the Dominicans in popular esteem were the Franciscans, or Minorites (*fratres minores*) as they were called by their founder. By the public they were called Grey Friars, from the colour of their clothing. As the Dominicans laid themselves out to win the higher and more educated classes, so the Franciscans sought to leaven the masses. To effect this they took a vow of absolute poverty, and then went forth to preach and to beg. The order was founded by St. Francis of Assissi in 1209 A.D., and in 1219 A.D. numbered 5000 members. The rule was approved by Honorius III. in 1223 A.D. There was a second order of nuns, called Poor Ladies or Poor Clares, from Sta. Clara, their first abbess, and sometimes Damiantines, from their first Church, that of St. Damian in Assissi. There was also a third order for those living in the world, called Tertiaries. Brother Angelo of Pisa, with eight companions, introduced the order into this country in 1224 A.D. Their first house was at Canterbury, but they also soon acquired another in London, in the ward of Faringdon Within, on the site now

(58). Oliver Monasticon, p. 334, says that this foundation was anterior to 1240.

occupied by Christ's Hospital, and were established in Exeter before the year 1240 A.D. (59), and at Plymouth before 1383 A.D. (60). The Franciscan province of England was apportioned into seven "custodies" or divisions, and at the dissolution it included sixty-five houses in England and Wales.

17. Almost from the first the Franciscans were divided into two parties—one led by Elias, the third general of the order, who assumed a garb less coarse, built beautiful churches and convents, and cultivated art and learning; these were termed *Brethren of the Community;* the other, led by St. Antony of Padua, who advocated the primitive rigour and called themselves *Spirituals.* St. Bonaventura, who was elected general in 1256 A.D., favoured the latter party, and gradually restored strict discipline; but with the generalship of Matteo di Aquas Spartas the laxer party became predominant, and continued so until the order split into two branches—the *Conventuals,* who followed the mitigated rule (61), and the *Observants,* who adhered to the primitive and strict rule. The latter were confirmed by the Council of Constance in 1415 A.D., received permission to hold general chapters of their own, and obtained possession of St. Francis' Portiuncula at Assissi. Henry IV. is said to have introduced the Observants into this country, but no trace of them can be found before Henry VII.'s time, who built two or three houses for them (62). The Capuchins are an offshoot of the Observants, who were founded by Matteo di Baschi in 1525 A.D. They were not introduced into this country before 1630 A.D. The Recollets are a French congregation of Observants, founded by the Duke of Nevers in 1592 A.D. The Alcantarines, the strictest branch of Observants, are a Spanish congregation, founded in 1540 A.D. by Peter of Alcantara.

18. There existed on Mount Carmel, from the earliest times,

(59). Oliver, *Ibid.* p. 330.

(60). *Ibid.* p. 151.

(61). Extrav. Tit. XIV. c. 1, says that the rule to wear common clothes (vilia indumenta) must be interpreted by the superior.

(62). Gasquet's Henry VIII. and the English Monasteries, 155 note; Tanner, Monasticon VI. 1504.

hermits, to whom John Nepos, Bishop of Jerusalem, gave a rule in the fourth century. After many vicissitudes, Berthold, Count of Limoges, in 1156 A.D., associated them into the order of St. Mary of Carmel, for whom Albert, Patriarch of Jerusalem, in 1209, drew up a rule. They were then called Carmelites or White Friars, and also Barry Friars, from the barred dress which the Saracens compelled them to wear when they took possession of the East. The rule was confirmed by Honorius III. in 1224 A.D. In 1240 A.D. the order was introduced into this country, and a fresh rule given to it by Innocent IV. in 1247. At the time of the dissolution the White Friars had forty houses in England and Wales, amongst others one at Plymouth (63), founded in 1314. There are now three branches of Carmelites, known respectively as Calced, Discalced, and Tertiaries. The Tertiaries were established in 1476 A.D. by Sixtus IV. The barefooted or discalced Carmelites were founded by St. Teresa at Avila in 1562.

19. The Augustinians (64), or hermits of St. Augustine, commonly called Austin Friars, are the fourth of the Mendicant Orders, and were constituted an order by Alexander IV. in 1256 A.D., by the amalgamation of eight different congregations, among which the John-Bonites, the Brittines, and the Tuscan hermits held the chief place. Each of these congregations followed the so-called rule of St. Augustine, whence they were all called Augustinians or Austin Friars. They were never an important order. At the time of the dissolution they had thirty-two houses in this country, and must be kept entirely distinct from the canons regular of St. Augustine.

### Later Missionary Orders.

20. To meet the altered circumstances of more recent times new orders began to appear in the sixteenth century, having for their object the diffusion and spread of the faith at home and abroad. Among these may be mentioned (1) the Jesuits

(63). Oliver, Monasticon 152.
(64). Lynd. 214, quoted note 3.

founded by Ignatius Loyola in 1540 A.D., and distinguished for their moral theology; (2) the Oratorians, a congregation of secular priests without vows, founded in 1575 A.D., by St. Philip Neri; (3) the congregation of the Mission, or Vincentians, founded in 1624 by St. Vincent de Paul, for the service of the poor and the improvement of the clergy by missions; (4) the Passionists, founded by St. Paul of the Cross in 1720; and (5) the Redemptorists, founded by St. Alfonso Liguori at Scala, in 1732. The two last-named orders add to the usual vows a vow of perseverance in the order, and the Redemptorists refuse all benefices, dignities, or offices whatsoever.

# V.

# ECCLESIASTICAL SEVERITY.

## Censures, Penances, and Penalties.

1. The various means which are employed for the purpose of enforcing spiritual or ecclesiastical discipline are generally called coercion or severity. They are of three kinds, viz. (1) those which are employed to bring an offender to repentance, termed *censures;* (2) those which are employed to restore him to the lost estate of holiness, called *penances;* and (3) those which are used purely vindictively, called *penalties* (1). The power to inflict censures and penances belongs to the Church, as a divine society seeking the salvation of all men. The power to inflict vindictive penalties as such belongs to it as a society entrusted by the civil community with some portion of its temporal government. The term *poena* is used in Latin to express both a penance and a penalty. Hence penal severity includes as well corrective as vindictive severity.

2. It is the contention of many that originally the Church had only one form of severity, viz., exclusion from Church fellowship (2). This, however, involved at once both censure

(1). Many canonists make only a two-fold division into (1) *poenae*, and (2) *censurae*. Schmalzgrueber, Jus. Univ. Lib. v. Tit. 37, defines *poenae* as delictorum coercitiones sive vindictae ad disciplinae publicae emendationem institutae. They then distinguish (for instance Craisson § 6302) between (*a*) poenae proprie dictae, *i.e.*, vindictive penalties, and (*b*) opera satisfactoria a confessariis imposita, *i.e.*, private penances.

(2). Morinus, Petrus de Marca, and others. See *Discipline Generally*, note 34. Devoti Lib. iv. Tit. i. § 6, and Tit. xvii. § 11, clearly shows that penance, the subjective side of severity, was always distinguished from censure, the objective side of it. See Matt. viii. 15. Socrates iv. 23 gives an account of penances undergone by holy monks who were certainly not under censure. Concil. Turon. A.D. 460, Can. 8; Concil. Venet. A.D. 465, Can. 3 and 13; Concil. Agath. A.D. 506, ap. Gratian i. Dist. xxxv. c. 9,

and punishment. For when, by exclusion from the covenant of grace, the use of the ordinary means of grace was withdrawn from an offender, Satan recovered his lost power over the human body. Suffering followed in consequence—either sickness of mind, or sickness of body, or both (3), and thus exclusion from communion became highly penal. The object of the exclusion being nevertheless to bring the offender to repentance, "that the soul might be saved in the day of the Lord" (4), the recovery of the offender from the power of the arch-foe by means of the prayers of the Church, and the substitution of voluntarily undertaken penances for his cruel buffetings, or, in other words, the substitution of the lesser excommunication coupled with penance, for the greater excommunication (5), was a merciful provision for the benefit of offenders. Severity then only became vindictive when it was met in the spirit of obduracy (6), but such was not its intention.

3. In mediaeval times, when the Roman pontiffs had become

directs a drunken presbyter either (1) to be removed from communion for thirty days—(a censure)—or (2) to undergo bodily penance. Concil. Epaon. A.D. 517, Can. 5; Concil. Matiscon. A.D. 581, Can. 1; Ayliffe 155.

(3). See *Penance*, notes 17, 86, 152, and *Discipline Generally*, note 23.

(4). 1 Cor. v. 5, the delivery of the incestuous Corinthian to Satan was *εἰς ὄλεθρον τῆς σαρκὸς*, that his body might be buffeted by Satan, in order that his spirit might be saved [*i.e.*, presented pure before God, according to Tertullian de Pudic. c. 13]. In 1 Tim. i. 20 Hymenaeus and Alexander were delivered to Satan, in order that they might "learn not to blaspheme." In 1 Cor. xi. 32, St. Paul says: When we are judged we are being chastened by the Lord, in order that we should not be punished with the world. In 2 Cor. xiii. 10, he states that his spiritual weapons are given him for edification, not for destruction.

(5). Offenders who have come to satisfaction are termed penitents—(see *Penance*, notes 66 and 96, and *Discipline Generally*, § 22)—and belong in a sense to the Church. (See *Penance*, notes 97 and 105.) Hence they are allowed to participate up to a certain point in the prayers of the Church (see *Order*, note 4), although excluded from the prayers of the faithful, and from participation in the offering.

(6). Lynd. 264, speaking of obduracy, says: Man may be without grace in two ways, either because he will not receive it, or because God does not give it. But God does not wish man to be without grace, except in so far as being without it is good for him.

temporal sovereigns, and elsewhere bishops and abbots had acquired the rank and privileges of temporal princes and barons, besides imposing public penances for correction and the soul's health, they also imposed public penalties, for the good of the community and the protection of society. Many of the disputes which agitated the world in mediaeval times arose from an attempt to apply papal decrees concerning temporal matters which the Pope had issued to prelates in localities where he possessed temporal sovereignty, to other localities where he possessed no temporal rights (7). It is, however, well not to forget that from the time of King John's surrender of the kingdom to Innocent III., in the year 1213 (8), until the year 1366, when the surrender was repudiated by Parliament, this country, besides being an integral part of the Western Church, was held as a fief of the Holy See (9), and was therefore subject to such temporal regulations made by the Pope as an over-lord in feudal times had power to make. Here, therefore, as elsewhere, ecclesiastical severity is found in use of three kinds, viz. (1) remedial or medicinal, to bring an offender to repentance; (2) corrective, to restore him to holiness; and

(7). For instance, the dispute about investitures.

(8). Lingard, vol. II. p. 165, chap. 5: On the 14th day of May, in the Church of the Templars, the king, surrounded by the prelates, barons, and knights, put into the hands of Pandulph a charter, subscribed by himself, one archbishop, one bishop, nine earls, and three barons, declaring . . . that of his own free will, and with the unanimous consent of his barons, he had granted to God, to the holy apostles Peter and Paul, to Pope Innocent, and Innocent's rightful successors, the kingdom of England and the kingdom of Ireland, to be holden by himself and the heirs of his body of the Bishop of Rome, in fee by the annual rent (*census*) of 1000 marks, reserving to himself the administration of justice and of all the rights of the crown.

(9). According to Lingard, vol. III. p. 126, chap. 3: The rent or *census* was intermittently paid for nearly a century. On the death of Edward I. seventeen years' arrears were due, which Edward II. discharged, and the rent was faithfully paid by Edward III. up to the year 1333, when the war with France began. On the return of peace, Urban V., in 1366, demanded the thirty-three years' rent in arrear. Edward consulted his Parliament, with the result that Parliament declared King John's act *ultra vires.*

(3) vindictive, to warn others for the public good. The two former are forms of spiritual severity, the last-named is ecclesiastical rather than spiritual.

### Remedial Severity, Censures.

4. A censure is defined to be a form of remedial severity (10) whereby a baptized person is deprived of some spiritual privilege, such as the use of the sacraments, participation in the suffrages and charitable works of the Church, the exercise of sacred functions either for a fixed time or indefinitely, because of some offence or act of disobedience on his part, in order to bring him to repentance. In itself it is not penal, but it quickly becomes such if it fails in its object of bringing the offender to repentance, and is often spoken of as the spiritual (11) or the bishop's sword (12). There are generally said to be three kinds of it, viz., suspension, excommunication, and the interdict (13).

(10). Innocent III. in Decret. Lib. I. Tit. II. c. 11 : He who is deprived of communion because of contumacy, should be restored as soon as he has made fitting satisfaction. Concil. Lugdun. A.D. 1245, in Sext. Lib. v. Tit. XI. c. 1 : Since excommunication is medicinal, not penal (mortalis), its aim being to discipline, not to destroy (eradicans), provided the subject of it does not meet it with contempt. Const. 28 Othobon, A.D. 1268 : Ecclesiastical censures . . . are . . . a medicine intended for the cure of the party coerced.

(11). Const. 4 Boniface, A.D. 1261. The two swords are distinguished by Concil. Lugdun. A.D. 1245, in Sext. Lib. v. Tit. XI. c. 6 ; Lynd. 127 ; 9 Ed. II. St. I. c. 6, A.D. 1315 ; 31 Eliz. c. 6, sec. 9 ; Lynd. 256.

(12). Gratian Caus. XVI. Qu. II. c. 1 ; Innocent III. in Decret. Lib. v. Tit. XXXIII. c. 11 ; Const. 31 Langton, A.D. 1222 ; Const. 7 Stratford, A.D. 1343 ; Lynd. 176, 196 ; Devoti Lib. IV. Tit. XVIII.

(13). Matt. XVIII. 17 ; 1 Cor. V. 11, 13 ; 2 Thess. III. 14, are instances of the three. Concil. Ilerd. A.D. 523, Can. 6, speaks of (1) separation from communion, and (2) from consorting with the faithful. John VIII. A.D. 888, ap. Gratian Caus. III. Qu. IV. c. 12. The three are enumerated by Innocent III. in Decret. Lib. V. Tit. XL. c. 20, and Const. 28 Othobon, A.D. 1268 ; Lynd. 9, 143, 110, 196, 199, 256. The interdict dates from the twelfth century.

The three kinds have many points in common (14), but in many respects they differ (15).

5. Suspension, called also abstention (16), medicinal repulsion (17), simple separation (18), or the lesser excommuni-

(14). Lynd. 349 states that they have ten points in common: (1) They require the same forms to be followed, Sext. Lib. v. Tit. xi. c. 1; (2) an appeal precedent suspends their operation, but not an appeal subsequent, Decret. Lib. ii. Tit. xxviii. c. 53; (3) they exclude those involved in them from taking part in divine service, Decret. Lib. v. Tit. xxvii. c. 7; (4) each must be preceded by monition, Decret. Lib. ii. Tit. xxviii. c. 26; (5) absolution may be preceded by an oath to stand to satisfaction, and may be granted *ad cautelam*, Decret. Lib. v. Tit. xxxix. c. 52; (6) each must be respected by superiors, *Ibid.* Lib. i. Tit. xxxi. 3; (7) during their existence the party is incapable of promotion, *Ibid.* Lib. i. Tit. iv. c. 8; (8) none of them can be inflicted without a citation, Sext. Lib. ii. Tit. xv. c. 3; (9) the special sons of the Apostolic See claim exemption, Sext. Lib. v. Tit. xii. c. 1; (10) all of them are included in the term ecclesiastical censure, Decret. Lib. v. Tit. xx. c. 20.

(15). Lynd. 349 enumerates: (1) Participation is permitted with one suspended and interdicted, but not with one excommunicated. (2) Excommunication and suspension apply to persons, the interdict to places. (3) The effect of an excommunication when pronounced cannot be suspended; the effect of the two others can. (4) There can be no relaxation of an interdict *ad cautelam*, but there can be of the other two. (5) A bishop is bound by a sentence of excommunication, although not named therein, but not by an interdict of suspension. (6) A corporation cannot be excommunicated, but may be interdicted. (7) Excommunicates are not admitted to penance except *in articulo mortis*, whereas those suspended or interdicted are. (8) On certain festivals the interdicted are admitted to church, but not the excommunicated. (9) Excommunication is never inflicted for the fault of another—Augustin ap. Gratian Caus. xxiv. Qu. iii. c. 1—whereas suspension and the interdict are. *Id. Ibid.* Caus. xvii. Qu. iv. c. 8.

(16). ἀφορισμός. Cyprian Ep. 66 (Oxf. 78), A.D. 254, ad. Steph.; Concil. Elib. A.D. 305, Can. 79: Placuit eum abstineri. Concil. Tolet. A.D. 400, Can. 13, ap. Gratian iii. Dist. ii. c. 18; Pseudo-Isidor. *Ibid.* Caus. vi. Qu. l. c. 3. Theodori Poenit. i. i. 1 in H. and S. iii. 137: Abstineant se ab ecclesia.

(17). Augustin Serm. 351; *Ibid.* Caus. ii. Qu. l. c. 1: We may not repel any one from communion (although such repulsion be not mortal, but medicinal) unless he either confesses himself guilty or is proved guilty. Concil. Lugdun. A.D. 1245, in Sext. Lib. v. Tit. xi. c. 1.

(18). Theodori Poenit. i. xiv. 2 in H. and S. 187: Non separentur.

cation (19), and occasionally a personal interdict (20), consists in being excluded from offering and participation in the sacred rites of the Church, whilst still being allowed to participate in the prayers. In mediaeval terminology it is described as separation from passive communion, or the receiving of the sacraments whilst still being allowed active communion, or the administration of them to others (21). A graver form of it is exclusion from participation in the prayers of the faithful; but this is no longer used as a distinct form of public censure. A graver form still is exclusion from all association with the faithful, or, as it is said, from entrance to the Church (22). The last named is termed the greater excommunication.

6. The greater excommunication (23), which is generally understood when excommunication is prescribed (24), called also complete separation (25), or mortal repulsion (26), involves not only exclusion from passive communion in the sacraments, but also exclusion from active communion in them, and from all association with the faithful (27). With one thus excommunicated

(19). Gratian Caus III. Qu. IV. c. 12. Law's Forms, 67.

(20). Const. 10 Clarendon, A.D. 1164; Lynd. 94, 110.

(21). Law's Forms, p. 124.

(22). Gregory VII. ap. Gratian I. Dist. LXXXI. c. 15: We forbid them entrance to the Church till they come to satisfaction. Concil. Lat. IV. A.D. 1215, Can. 47 in Decret. Lib. V. Tit. XXXIX. c. 48; Const. 17 Boniface, A.D. 1261; Const. 21 Peckham, A.D. 1281; Boniface VIII. in Sext. Lib. V. Tit. XI. c. 20; Const. 7 Stratford, A.D. 1342; Lynd. 99, 110; Morinus de Poenit. Lib. VI. c. 25.

(23). Apost. Const. II. 40: But do not thou, O bishop, presently abhor any person who has fallen into one or two offences, nor exclude him from the word of the Lord, nor reject him from common intercourse. Const. 31 Langton, A.D. 1222; Const. 20 Edmund, A.D. 1236; Const. 1 Stratford, A.D. 1343; Const. 1 Arundel, A.D. 1408; Lynd. 127.

(24). Gregory IX. in Decret. Lib. V. Tit. XXXIX. c. 59; Lynd. 78.

(25). ἀφορισμὸς παντελής, omnimoda separatio. Concil. Tolet. I. A.D. 400, Can. 15: If any one is found to speak or eat with one who is separated, let him be separated himself (ipse abstineatur).

(26). Augustin ap. Gratian Caus. II. Qu. I. c. 1, quoted above, note 17.

(27). Law's Forms, p. 124.

and denounced by name ([28]) no layman, under pain of the lesser excommunication, nor clergyman, under pain of suspension from office, may have relations ([29]), either in food, drink, prayer, or the kiss of peace ([30]). Because of its temporal consequences, this censure is termed animadversion ([31]), or the temporal sword ([32]), and ought never to be imposed without the advice of other skilful physicians ([33]).

7. Excommunication may be awarded either (1) solemnly, *i.e.*, by the Christian body acting collectively, or (2) non-solemnly, by those having jurisdiction to act on its behalf ([34]), as by a

(28). Craisson, § 6493, 6501, 6561, states that this is the rule since the time of the Council of Constance.

(29). Innocent III. *Ibid.* c. 29 ; Gregory IX. *Ibid.* c. 55.

(30). Rom. XVI. 17 : ἐκκλίνατε ἀπ' αὐτῶν. 2 Thess. III. 14 : καὶ μὴ συναμίγνυσθε αὐτῷ. Apost. Can. 11 : If any one prays with a person excommunicated, let him be suspended. Concil. Antioch. A.D. 341, Can. 2 ; Concil. Tolet. I. A.D. 400, Can. 15 ap. Gratian Caus. XI. Qu. III. c. 26 ; Stat. Eccl. Ant. A.D. 505, *Ibid.* c. 19 : He who communicates or prays with one excommunicate, let him be excommunicated if a layman, or deposed if a clergyman. Chrysostom. *Ibid.* c. 24 ; Concil. Brac. II. A.D. 572, Can. 84 ; Gregory *Ibid.* c. 25 ; Zacharias, A.D. 751, *Ibid.* c. 105 ; Boniface *Ibid.* c. 104 ; Nicolaus *Ibid.* 102 ; Pseudo-Isidor. *Ibid.* c. 17 ; Syn. VIII. A.D. 869, *Ibid.* c. 28 ; Concil. Autissiodor. A.D. 578, Can. 39 : If any priest, clerk, or layman knowingly receive, or eat, or converse with one who is excommunicate, without the knowledge of him who excommunicated him, he will be subject to the same sentence. Const. 20 Edmund, A.D. 1236 ; Const. 4 Boniface, A.D. 1261 ; Clemens III. in Decret. Lib. V. Tit. XXXIX. c. 18 ; Const. 13 Stratford, A.D. 1343 ; Lynd. 266, 352 ; Devoti Lib. IV. Tit. XVIII. § 3.

(31). Gratian Caus. XI. Qu. III. c. 20 ; Clement III. in Decret. Lib. V. Tit. XXXIX. c. 14. See *Discipline Generally*, § 6.

(32). See above, note 11.

(33). Apost. Const. II. 41 : If after all that thou hast done the malady spreads, then with much consideration and the advice of others cut off the putrified member, that the whole Church be not corrupted.

(34). Alexander III. in Decret. Lib. I. Tit. XXXI. c. 3 ; Thom. Aquin. 4, Dist. 18, Qu. 2, Art. 1, c. 1 : In the tribunal of conscience a cause is dealt with between man and God, but in the tribunal of the outer forum a cause is dealt with between man and man ; and, therefore, binding and unbinding, which affects a man in his relation to God, belongs to the court of penance exclusively, but unbinding, which affects a man in relation to his fellow-

bishop or his vicar-general (35), an archdeacon or dean exercising an ordinary jurisdiction by custom, but not by a metropolitan over a mediate subject except in visitation, devolution, or appeal (36), nor by a parochial incumbent (37) except by a special delegation (38), and only by a delegate when it comes within the scope of his commission, or he is authorised to inflict it (39). Whenever it is non-solemnly inflicted, it is usually spoken of as excommunication. Whenever it is solemnly inflicted, it is termed the *anathema* or *execration* (40).

8. Like all other solemn acts, the anathema should be the act of the whole Church. According to mediaeval rule, not fewer than twelve presbyters were required to assist the bishop in pronouncing it, who stood round, holding lighted candles, whilst he read the sentence from a book, so that it might be seen that it was no hasty or ill-considered act. Meantime the bell was tolled. No sooner had the sentence been concluded than all dashed their candles to the ground, to symbolise the extinction of light in the soul of the anathematised one (41).

men, belongs to the court of the outer forum; and, because excommunication separates from the communion of the faithful, therefore it belongs to the outer forum, and those alone can excommunicate who have jurisdiction in the outer forum, *i.e.*, the bishop and greater prelates.

(35). Concil. Lugdun. A.D. 1245, in Sext. Lib. II. Tit. XV. c. 3.

(36). Concil. Lugdun. *Ibid.* Lib. V. Tit. XI. c. 7.

(37). Innocent III. to Bishop of Ely, A.D. 1204, in Lib. I. Tit. XXIX. c. 28; Lynd. 17, 338, 344. See *The Parish.*

(38). According to Ecclesiastical Courts Commission Report, when such a sentence had to be pronounced on a clerk in holy orders in the Arches Court, a presbyter was called in by the Dean of Arches to pronounce it, under a special commission from the archbishop.

(39). Alexander III. in Decret. Lib. I. Tit. XXIX. c. 5; Devoti Lib. IV. Tit. XVIII. § 12.

(40). Concil. Clovesho. A.D. 747, Can. 29 and preface; Concil. Chelsea A.D. 787, Can. 15; Concil. Westminster A.D. 1102, Can. 28, quoted *Excesses*, note 269; Gratian Caus. XXIII. Qu. IV. c. 30; Decret. Lib. II. Tit. 1. c. 10; Const. 21 and 27 Langton, A.D. 1222; Const. 10, 13, 17, and 20 Peckham, A.D. 1281; Lynd. 169, 196, 279, 322, 259, 51, 77, 121; Van Espen. Tract. de Caus. Eccl. Tom. IV. p. 9.

(41). Gratian Caus. XI. Qu. III. c. 106; Concil. Winton. A.D. 1143, Can. 2. An early form of the anathema is given by Johnson under Can. 17 of

The anathema was therefore popularly spoken of as excommunication by book, bell, and candle.

9. When not solemnly inflicted, a censure may be awarded either (1) by sentence of a judge ([42]), or (2) by sentence of law ([43]). A censure awarded by sentence of a judge is one not prescribed by any canon, but imposed by a judge in the exercise of the discretion committed to him by the Church. A censure awarded by sentence of law is one prescribed by the Church, with a view to the future enforcement of some law

Concil. Ebor. A.D. 1195 : By authority of Almighty God, Father, Son, and Holy Ghost, and St. Mary, mother of our Lord, and St. Michael the Archangel, and St. Peter the prime apostle, and St. Nicolas and the blessed Augustin, and all Christ's saints, let the men be excommunicated and damned that committed this theft . . . and let them be separated from entering into Holy Church, and from the fraternity of God's elect. Moreover, let them have their portion of punishment with Judas, our Lord's disciple, and with them that said to our Lord, Depart from us. . . . Let them be accursed eating and drinking, walking and sitting, speaking and holding their peace, waking and sleeping, rowing and riding. . . . Cursed be their head and their thoughts, their eyes and their ears, their tongues and their lips, their teeth and their throats, their feet and their legs. . . . And just as this candle is deprived of its present light, so let them be deprived of their souls in hell. Let all the people say, So be it. Const. 2 and 4 Winch. A.D. 1298 ; Const. 13 Stratford, A.D. 1343 ; Lynd. 350.

(42). Lynd. 39.

(43). These sentences are sometimes stated to have been introduced in the twelfth century. But in Gal. I. 8, St. Paul declares that if an angel from heaven proclaim any other Gospel, let him be anathema. Titus III. 10, 11, that a heretic who refuses to reform after two warnings has turned aside (*ἐξέστραπται*) and is self-condemned (*αὐτοκατάκριτος*). Jude 19 : *Οὗτοί εἰσιν οἱ ἀποδιορίζοντες ἑαυτούς* (who excommunicate themselves). Cyprian Ep. 51, 24, ad Antonian. Augustin ap. Gratian Caus. XXIV. Qu. III. c. 29 ; Paulinus Vita Ambrosii in Migne XIV. 31, relates that when the soldiers surrounded the Church of Milan, in 385, St. Ambrose declared that all who invaded the Church would be excommunicate. Gregory *Ibid.* Caus. V. Qu. I. c. 2 declares the unknown slanderer of his notary excommunicate. Pseudo-Isidor. A.D. 850, *Ibid.* Caus. XVII. Qu. IV. c. 5, declares robbers of Churches anathema. Concil. Trecass. A.D. 878, *Ibid.* c. 21 : Let [a violator of Churches] know that he is deprived of communion until, admonished in the assembly, he has made satisfaction. Concil. Westminster A.D. 1200, Can. 7 ; Ayliffe 156.

or general rule. Such censures, again, are either censures of law already passed (*sententiae latae*), or censures of law to be passed (*sententiae ferendae*) (44). The latter are called comminatory censures. A canon which declares that certain offenders are *ipso facto* or *ipso jure* excommunicate is a censure of law already passed (45). A canon which directs excommuni-

(44). Lynd. 13, 15, 147, 170, 187, 197.

(45). Sentence of *ipso facto* excommunication is ordered by English constitutions in the following cases: By Const. 5 Peckham, A.D. 1279, on a rural dean for not reading Othobon's Constitution de Concubinariis; by Const. 16 Stratford, A.D. 1343, for maliciously indicting innocent persons; by Const. 13 Peckham, A.D. 1281, on an already disqualified official acting fraudulently; by Const. 5 Boniface, A.D. 1261, on lay judges presuming to condemn clerks; by Const. 15 Stratford, A.D. 1343, for violating a sequestration; by Const. 2 Chichele, A.D. 1415, on laymen exercising spiritual jurisdiction; by Const. 1 Peckham, A.D. 1279, for holding pluralities contrary to the canon of the Council of Lyons; by Const. 12 Stratford, A.D. 1342, and Const. 3 Boniface, A.D. 1261, for intruding into a benefice imperfectly vacant; by Const. 9 Stratford, A.D. 1342, for fraudulent alienation of goods; by Const. 7 Stratford, A.D. 1343, for hindering the execution of a testament; by Const. 7. Mepham, A.D. 1328, Const. 4 Stratford, A.D. 1343, and Const. 1 Winchelsea, A.D. 1305, for obstructing the payment of tithes and offerings; by Const. 5 Winchelsea, A.D. 1305, on a stipendiary priest taking offerings or fees without the rector's permission; by Const. 1 Sudbury, A.D. 1378, on a mass priest demanding from his rector more than his allotted stipend; by Const. 9 Boniface, A.D. 1261, for invading ecclesiastical property or rights; by Const. 11 Boniface, for the king's bailiff acting oppressively during the vacancy of a see; by Const. 12 Stratford, A.D. 1343, for hindering the lawful proceedings of an ecclesiastical judge; by Const. 13 Stratford, for wrongfully setting at large one imprisoned by an ecclesiastical judge; by Const. 14 Stratford, for usurping the herbage and trees in holy places; by Const. 11 Stratford, for unlawfully celebrating prohibited marriages; by Const. 6 Arundel, A.D. 1408, for publishing unauthorised translations of the Bible; by Const. 1, 3, and 10 Arundel, for preaching otherwise than allowed by the canon; by Const. 17 Peckham, A.D. 1281, also Const. 3 Peckham, A.D. 1279, for committing incest with nuns—in all twenty-two, which cover sixty different cases. Lynd. 355 says that besides these the Bishop of Ostia enumerates thirty-three cases, collected from the decrees and decretals; and John Andrew of Bologna mentions thirty-two more, besides fifty collected from the Clementines, in commenting on Clem. Lib. v. Tit. x. c. 1, making altogether 175 cases, exclusive of those provided for in the constitutions

cation to be awarded as the punishment for certain offences is a censure of law to be passed. The difference between the two will be more fully considered under the subject of sentences (46).

10. The effects of a sentence of excommunication, as laid down by mediaeval constitutions, are the following: (1) All persons suspended or excommunicated are forbidden the reception of all sacraments, including order (47), and are also forbidden the administration of them (48), except in cases of emergency. (2) They are excluded from participating in the intercessions, suffrages, or favours of the Church, and from being commemorated in the public prayers (49). (3) They are disqualified from holding benefices (50), or taking any active part in judicial proceedings (51). (4) They forfeit the benefit of any rescript of favour or justice (52). If excommunicated with the greater excommunication, and denounced by name, they are, moreover, (5) forbidden the exercise of jurisdiction (53), and (6) are cut off from intercourse with the faithful in life (54), and from Christian burial when dead (55). The only exceptions allowed to the

of Otho and Othobon. Lynd. 18, 77, 122, 258; Cave, Primitive Christianity III. 5; Bingham XVI. 3; Devoti Lib. IV. Tit. XVIII. § 8; Ayliffe 156.

(46). See *The Conclusion of a Cause*, § 12.

(47). Innocent III. in Decret. Lib. V. Tit. XXXIX. c. 32; Craisson, § 6510.

(48). Alexander III. to Bishop of London, *Ibid.* Lib. V. Tit. XXVII. c. 3.

(49). Gratian Caus. XI. Qu. III. c. 20; Clement III. in Decret. Lib. V. Tit. XXXIX. c. 14. See *Ecclesiastical Sacraments*, § 9.

(50). Innocent III. in Decret. Lib. V. Tit. XXVII. c. 7.

(51). Concil. Lugdun. A.D. 1245, in Sext. Lib. II. Tit. XII. c. 1, except proceedings to prove the injustice of his sentence. Innocent III. in Decret. Lib. I. Tit. XXIX. c. 36.

(52). Innocent III. in Decret. Lib. I. Tit. III. c. 26; Gregory IX. in Sext. Lib. I. Tit. III. c. 1: It is therefore usual to add an absolution from censures to any grant of indulgence or favour.

(53). Gratian Caus. XXIV. Qu. I. c. 3, and 36–42; Innocent III. in Decret. Lib. II. Tit. XXVII. c. 24.

(54). Busenbaum ap. Liguori. Lib. VII. 188, sums them up in the line—

Os, orare, vale, communio, mensa negatur.

(55). Concil. Vien. A.D. 1311, in Clem. Lib. III. Tit. VII. c. 1; Const. 4 Sudbury, A.D. 1378.

last-named rule are that intercourse is permitted with a husband, wife, or dependent (56), with others only in case of necessity (57), or when some good purpose may be served, or when the intercourse takes place in ignorance (58). In this country, however, by civil legislation of recent times, no civil penalty or incapacity whatever is now incurred by excommunication, except liability to imprisonment for a period not exceeding six months (59).

11. The suspension or excommunication of one in orders necessarily carries with it suspension from office, and renders the offender irregular if he officiates before it is relaxed. Even a sentence of the lesser excommunication makes one liable to deprivation who officiates after warning not to do so (60), and one who officiates whilst under a sentence of the greater excommunication is deprived *ipso jure* or *ipso facto* for his contumacy (61). An unjust excommunication, though it cannot do spiritual harm (62), must nevertheless be observed (63), until it is set aside on appeal (64). Neither a corporate body (65), nor one who has not been baptized (66), nor a dead person (67),

(56). Gregory VII. ap. Gratian Caus. XI. Qu. III. c. 103; Innocent III. in Decret. Lib. V. Tit. XXXIX. c. 31.

(57). Innocent III. l. c. c. 34.

(58). Gregory VII. l. c.

(59). By 53 Geo. III. c. 127.

(60). Alexander III. to Bishop of London in Decret. Lib. V. Tit. XXVII. c. 3; to Bishop of Toledo, *Ibid.* c. 4.

(61). Apost. Can. 29: If one suspended for crime ventures to meddle with the administration formerly entrusted to him, let him be entirely cut off from the Church. Innocent III. l. c. c. 6.

(62). Augustin ap. Gratian Caus. XI. Qu. III. c. 87; Gelasius *Ibid.* c. 46: An unjust sentence can hurt no one before God.

(63). Urban ap. Gratian Caus. XI. Qu. III. c. 27 and 1.

(64). Stat. Eccl. Ant. A.D. 505, Can. 66; *Ibid.* c. 30; c. 34, 36.

(65). Concil. Lugdun. I. A.D. 1245, in Sext. Lib. V. Tit. XI. c. 5: We forbid a sentence of excommunication to go forth against a university or college, because it often happens that the innocent may be involved in such a sentence.

(66). 1 Cor. v. 12: *τί γάρ μοι καὶ τοὺς ἔξω κρίνειν;*

(67). Gelasius, A.D. 494, ap. Gratian Caus. XXIV. Qu. II. c. 2; Innocent III. in Decret. Lib. V. Tit. XXXIX. c. 28.

nor one who is not actually or constructively contumacious (68) may be excommunicated. A dead person may nevertheless have his name removed from the diptychs of the Church (69), and so be no longer remembered in the Eucharistic prayers. By English constitutions, the names of all persons under a sentence of the greater excommunication are required to be publicly denounced four times a year (70).

12. As being the gravest form of spiritual censure (71), excommunication may not be awarded (1) for trifling matters, but only for manifest and certain excesses (72), or for contumacy in refusing to appear to a citation, or to obey a monition, or for going away before a cause is concluded (73); (2) never without monition (74), except in the cases prescribed by the canons (75), but by mediaeval rule a single peremptory monition suffices (76); (3) it may not be awarded without a citation; (4) it must always be drawn up in writing, in a document setting forth the excess for which it is awarded (77), unless it is a

(68). Hence a sentence of excommunication given without warning is void and a nullity. Concil. Lat. III. A.D. 1179, in Decret. Lib. II. Tit. XXVIII. c. 26; Concil. Lugdun. A.D. 1245, in Sext. Lib. V. Tit. XI. c. 2; Concil. Lugdun. II. A.D. 1275, *Ibid.* c. 9.

(69). Syn. V. A.D. 553, ap. Gratian Caus. XXIV. Qu. II. c. 6; Innocent III. l. c. c. 28. In Harduin III. 126, this council at its fifth session removed the name of Theodore from the diptychs of Mopsuestia, replacing it by Cyril of Alexandria. This was done at the instance of the Emperor Justinian.

(70). Const. 12 Stratford, A.D. 1343; Lynd. 27.

(71). Augustin ap. Gratian Caus. XXIV. Qu. III. c. 17.

(72). Concil. Meldens. A.D. 845, *Ibid.* Caus. XI. Qu. III. c. 41; Const. 26 Langton, A.D. 1222.

(73). Concil. Tribur. A.D. 895, *Ibid.* c. 43. In this country excommunication is, by 53 Geo. III. c. 127, no longer allowed to be awarded for such contumacy. Law's Forms, 125.

(74). See note 68, and *Discipline Generally*, notes 13 and 15.

(75). *Discipline Generally*, § 6.

(76). Concil. Lugdun. A.D. 1274, in Sext. Lib. V. Tit. XI. c. 9, allows a peremptory monition to do duty for three monitions, but requires an interval of time to elapse equal to that required for three ordinary monitions, *i.e.*, six days, since an ordinary monition requires three days. Craisson, § 6112. See *Canonical Procedure*, § 27.

(77). Concil. Lugdun. A.D. 1245, in Sext. Lib. V. Tit. XI. c. 1;

solemn repetition of a previous excommunication (78); and (5) it cannot be awarded as a sentence already past for future offences (79) by any ordinary or delegate, but only by a canon of the Church. Moreover, the anathema may not be pronounced without the consent of the metropolitan or the comprovincial bishops (80).

13. Because of the solidarity of the Church, an excommunication pronounced by one bishop, or in one part of the Church, takes effect and must be observed in all other parts of it (81). Bishops are therefore directed to communicate such sentences to one another (82). For the same reason, an excommunication can only be withdrawn by the prelate who pronounced it (83), and

Const. 4 Boniface, A.D. 1261; Lynd. 350. See the *Conclusion of a Cause*, § 9.

(78). Lynd. 350.

(79). Concil. Lugdun. A.D. 1245, in Sext. Lib. v. Tit. XI. c. 5; 38 Hen. III. A.D. 1254; Const. 1 Langton, A.D. 1222; Const. 21 Boniface, A.D. 1261; Const. 3 Peckham, A.D. 1279; Const. 10 Peckham, A.D. 1281; Const. 4 Winchel. A.D. 1298; Const. 3 Mepham. A.D. 1328; Const. 14 Stratford, A.D. 1343; Const. Chichele, A.D. 1434; Lynd. 315, 345, 353; Craisson, § 6405.

(80). Concil. Melden. A.D. 845, Can. 56 ap. Gratian Caus. XI. Qu. III. c. 41: Let a bishop place no one under anathema without the privity of the archbishop or his fellow-bishops, except in accordance with canonical authority, because anathema is condemnation to eternal death, and ought not to be imposed save for a mortal crime, which cannot in any other way be corrected.

(81). Apost. Can. 13: If a clergyman or layman who is suspended goes away, and is received in another city without commendatory letters, let both those who received him and him that was received be suspended. Can. 33: If any presbyter or deacon be suspended by his bishop, it is not lawful for any other to receive him . . . unless he who suspended him dies. Concil. Arelat. II. A.D. 443, Can. 8, calls him who admits one excommunicated by another an offender against the Christian brotherhood (reum fraternitatis). Concil. Paris III. A.D. 615, Can. 7; Concil. Lugdun. II. A.D. 567, Can. 4; Concil. Rothomag. A.D. 650, Can. 6; Innocent III. A.D. 1199, in Decret. Lib. v. Tit. XXXIX. c. 39.

(82). Gratian Caus. XI. Qu. III. c. 20; Const. 4 Boniface, A.D. 1261; Lynd. 350.

(83). Concil. Nic. A.D. 325, Can. 5; Concil. Arelat. I. A.D. 314, Can. 16; Concil. Antioch A.D. 341, Can. 6 ap Gratian Caus. XI. Qu. III. c. 2 and 3,

a solemn sentence only in the same solemn manner in which it was pronounced (84). A prelate can, however, be compelled to withdraw a sentence on appeal, if he has pronounced it for no adequate cause (85); and if he refuses so to do, it can be withdrawn by his superior (86). No bishop should in any case venture to pronounce a sentence of excommunication in a case in which he himself has an interest (87).

### The Interdict.

14. The interdict is a form of censure of mediaeval origin, wherein all the offices of religion, including Christian burial, are forbidden to be celebrated in certain places or before certain people, with the view of producing the reform of some offender (88). It is usually resorted to to influence those towards whom direct censure has been employed in vain, and it presupposes the existence of a powerful spirit of clanship among those to whom it is applied, which, it is presumed, will be able to bring effective pressure to bear on the erring one. In practice it works great injustice, since it too often causes those to suffer who have little power of influencing the guilty (89); and it has also been greatly abused

7–10; Concil. Taurin. A.D. 401, Can. 5; Concil. Lugdun. A.D. 1245, Can. 4 in Sext. Lib. v. Tit. xi. c. 5.

(84). Gratian Caus. xi. Qu. iii. c. 108; Const. 28 Othobon, A.D. 1268.

(85). Concil. Afric. ap. Gratian Caus. vi. Qu. ii. c. 3; Stat. Eccl. Ant. *Ibid.* c. 1; Concil. Agath. A.D. 506, Can. 3: Bishops who excommunicate for trivial matters, and refuse to receive those returning to grace, should be exhorted by neighbouring bishops to relent, and if they refuse, [those excommunicated] may receive communion from others until the synod meets. See *Excesses*, note 140.

(86). Jul. Ep. Nov. ap. Gratian Caus. ii. Qu. l. c. 11; Concil. Lat. iv. A.D. 1215, Can. 47 in Decret. Lib. v. Tit. xxxix. c. 48.

(87). Ambros. ap. Gratian Caus. xxiii. Qu. iv. c. 27.

(88). Const. 7 Clarendon, A.D. 1164, forbids an interdict being laid on the king's estate till application has been made to him. Const. 1 Otho, A.D. 1237; Const. 3, 7, and 9 Boniface, A.D. 1261; Const. 4 Winchelsea, A.D. 1298; Const. 1 Arundel, A.D. 1408; Lynd. 320, 258; Devoti Lib. iv. Tit. xix.

(89). Lynd. 308.

as a political weapon. Interdicts are of two kinds, (1) local and (2) personal; but both a local and a personal interdict may be general or particular.

15. In a *local* interdict (90), the offices of religion are forbidden to be celebrated within a certain district; but the persons living within the district are not thereby debarred from receiving them elsewhere (91). A local interdict is *general* when it includes a whole nation, province, or diocese; *particular* when it is confined to a single place or parish in a diocese, or to a particular Church in a parish. An interdict laid on any place, parish, or diocese extends to all the buildings, chapels, and cemeteries appurtenant to it (92).

16. In a *personal* interdict, the offices of religion are forbidden to be celebrated by or before one or more or a whole class of persons (93). If such an interdict is laid on the clergy (94), it does not extend to the laity. If laid on the laity, it does not apply to the clergy, unless they are specially named in it (95). When it is laid on the whole clergy or the whole people of any locality, it is called general. When it is confined to certain individuals who are mentioned by name, it is particular. A particular personal interdict is the same thing as the lesser excommunication (96) or suspension.

(90). Lynd. 94, 110.

(91). This is denied by Stremler, des Peines Ecclésiastiques 343, and Liguori Lib. VII. 332.

(92). Concil. Lugdun. A.D. 1274, in Sext. Lib. V. Tit. XI. c. 10; Boniface VIII. *Ibid.* c. 17; *Id. Ibid.* Lib. III. Tit. XXI. c. 1.

(93). Alexander III. in Decret. Lib. I. Tit. XXIX. c. 11, says that a rebellious bishop may be interdicted entrance to the Church or the exercise of his office.

(94). Apost. Can. 37: If a bishop-elect is not received . . . because of the people's ill-will, let him continue bishop, but let the clergy be suspended because they have not taught their disobedient people better. Concil. Mogunt. A.D. 851, Can. 8 in Decret. Lib. V. Tit. XXXIV. c. 2, calls an oath under pain of interdict the coercion of Christianity (bannus Christianitatis). Concil. Tribur. A.D. 895, Can. 8, calls it bannus episcopalis.

(95). Boniface VIII. in Sext. Lib. V. Tit. XI. c. 16.

(96). Const. 10 Clarendon, A.D. 1164: Bishops may lawfully put under an interdict one who will not make satisfaction upon their summons, but

17. The severity of the interdict, as at first employed, was, after the twelfth century, gradually toned down by the invention of a distinction between *complete* and *partial* interdicts. In a partial interdict, permission was first given to baptize infants, and to give penance to the dying (97); next, the permission was extended to allow preaching and confirmation (98); afterwards, Communion might be given to the dying, and Christian burial to the clergy (99). Still later, the Eucharist was allowed to be celebrated privately once a week, provided this were done in an undertone, without bell-ringing and with closed doors (100); and ultimately penance was allowed to be given to all, the Eucharist to be celebrated every day in Churches not specially interdicted, and solemnly at Christmas, Easter, Pentecost, and the Assumption, provided those who were the cause of the interdict were not permitted to approach the altar (101).

18. An interdict is forbidden to be imposed except for some very grave crime. When imposed it does not extend to bishops and greater prelates, unless they are specially named in it (102); but an interdict imposed by a bishop is held to include exempt regulars (103). If it is incurred *ipso facto*, as by bloodshed or adultery committed in a Church (104), or by harbouring a convicted heretic (105), clergy violating it are not

they ought not to excommunicate him. Craisson, § 6606, holds that the interdict includes much more than the lesser excommunication, quoting Boniface VIII. in Sext. Lib. v. Tit. XI. c. 18; Suarez thinks otherwise, quoting Gratian Caus. XXXIII. Qu. II. c. 15.

(97). Alexander III. in Decret. Lib. IV. Tit. I. c. 11.

(98). Innocent III. A.D. 1206, *Ibid.* Lib. v. Tit. XXXIX. c. 43.

(99). Innocent III. A.D. 1212, *Ibid.* Tit. XXXVIII. c. 11.

(100). Gregory IX. A.D. 1234, *Ibid.* Tit. XXXIX. c. 57.

(101). Boniface VIII. A.D. 1298, in Sext. Lib. v. Tit. XI. c. 24.

(102). Concil. Lat. IV. A.D. 1215, in Decret. Lib. v. Tit. XXXIII. c. 25; Concil. Lugdun. A.D. 1274, in Sext. Lib. v. Tit. XI. c. 4.

(103). Concil. Vien. A.D. 1311, in Clem. Lib. v. Tit. X. c. 1.

(104). Boniface VIII. in Sext. Lib. v. Tit. XI. c. 18, and Lib. III. Tit. XXI. c. 1.

(105). Boniface VIII. in Sext. Lib. III. Tit. XX. c. 4; Const. 1 Arundel, A.D. 1408; Lynd. 294.

guilty of an irregularity, although they are guilty of an offence. If it has been imposed by sentence, they are guilty of an irregularity, from which they can only be relieved by the spokesman of conciliar authority (106). Regulars violating it are ordered to be excommunicated (107), and also clergy who, during its continuance, bury the non-privileged dead (108).

### Corrective Severity—Penances.

19. As the severity which is exercised to bring an offender to repentance is termed censure, so that which is either voluntarily undertaken or submitted to, to do away with the effects of sin, is termed penance. Censure and penance borne unsubmissively or without recognition of their justice are deadly, and become vindictive punishments, but the spirit of humility and obedience makes them remedial and purificatory.

20. A penance may be defined to be a form of hardship inflicted on one who has offended against the rule of holiness, in place of leaving him to the tender mercies of the foe of mankind, in order to intensify inward repentance, and to make outward amends for the temporal effects of sin (109). It is not, therefore, a vindictive punishment or penalty, but rather a substitute for it; and it is (1) remedial in the inner forum (110), in that it enables the sinner to obtain the benefit of the satisfaction made to God by Christ, or, in other words, qualifies him

(106). Boniface VIII. *Ibid.* Lib. v. Tit. XI. c. 18.

(107). Concil. Vien. in Clem. l. c.

(108). Concil. Vien. *Ibid.* Lib. III. Tit. VII. c. 1.

(109). Concil. Clovesho A.D. 747, Can. 27 : A man should punish sin at present in proportion to its guilt, if he desire not to be punished hereafter by the eternal Judge. Penance is submission to punishment, and ever punishing oneself (poenam tenere) to avenge sin which has been committed. Ayliffe 420 : Penance is an act of punishment or vengeance whereby the party offending is punished in the ecclesiastical court, or, repenting thereof, afflicts and punishes himself. See *Penance*, note 153. Loening Kirchengeschichte I. 260.

(110). Gregory in Decret. Lib. v. Tit. XXXVIII. c. 1 : Manifest crimes may not be purged by secret correction.

for reconciliation with God (111); and (2) penal in the outer tribunal, in that it makes amends to the Christian society for the injury done to holiness (112), or, in other words, qualifies the offender for restoration to corporate communion with the Church. It may be either (1) public or (2) private, but public penance is not necessary where there has been no public offence against holiness (113).

21. Penances are usually said to be of three kinds, viz. (1) spiritual or devotional, (2) bodily, and (3) pecuniary (114). Devotional penances, which act as stimulating influences on the

(111). Clem. Strom. VII. 7 : God ministers eternal salvation to those who co-operate for the attainment of knowledge and good conduct. Cyprian Ep. 54, 13 ad Corn. speaks of penance satisfying an indignant God, redeeming sins, and washing away wounds. De Laps. 17 : The Lord must be appeased by our atonement. *Ibid.* c. 35 : And yet they were not redeeming sins of such a character as lapse. Ad Antonian. Ep. 51, 20 ; Ayliffe 155. The effect of temporal penances is held to be this—(1) that to one who is in a state of grace they are satisfactions to God, in that they apply to the individual the satisfactions made by Christ, through whose merits alone the penitential works are accepted as satisfactory ; and (2) that penitential works done by one who is not in a state of grace are satisfactions *de congruo*, in that they impetrate and dispose towards a state of grace wherein real satisfaction may be made. Hurter's Theol. Dogm. III. 553. Concil. Ilerd. A.D. 523, Can. 1, says "that they may be purified (expientur) by vigils, fastings, prayers, and almsgiving." Hormisdas ap. Gratian I. Dist. L. c. 29 ; Concil. Tolet. XIII. A.D. 683, Can. 10 : Penitentia ad hoc suscipitur ut et peccatum diluat et peccati sordes hominem iterare non sinat, quoted note 145. Durandus in III. Sent. Dist. 19, Qu. 1 : The passion of Christ is the universal cause of the remission of sins, which must needs be applied to individuals, in order to obtain effect in them.

(112). Cyprian de Laps. c. 23 : Some are punished in the meantime that others may be corrected. Schmalzgrueber Jus. Univ. Lib. v. Tit. 37, defines poenae as delictorum coercitiones sive vindictae ad disciplinae publicae emendationem institutae. Lynd. 265 : If any one has been excommunicated for an offence or sin, if it is only an offence against God, then he may be absolved on repentance, although he has not done penance for it. But when he is excommunicated for some injury done to another, then proper satisfaction must precede.

(113). See *Penance*, § 3.

(114). See *Penance*, note 86.

life of holiness, include such spiritual exercises as keeping vigils, saying prescribed prayers ([115]), more particularly the Lord's Prayer ([116]), and reciting the Psalter or parts of it, such as the 119th Psalm, called *Beati*, the 51st, called *Miserere*. Bodily penances, which are also of use by intensifying the command over the senses, and as visible tokens of submission to punishment, include fasting and abstinence ([117]), whipping when given to young people ([118]), and seclusion in a monastery when substituted for solemn discipline ([119]). Pecuniary penances, in so far as they involve personal self-denial, are only a particular form of bodily penances; but in so far as they are relaxations of, or substitutes for, bodily penances, permitted because of the greater good thereby accruing to others—and in

(115). Concil. Ilerd. A.D. 523, Can. 1, quoted above, note 111.

(116). Gratian 1 Dist. LXXXI. c. 5; Theodori Poenit. I. VII. 5 in Haddan & Stubbs III. 185: Theodore approved of twelve triduans (three days' fasting and prayer), being equivalent to a year of penance. Baeda X. 1, *Ibid.* 333: Twelve triduans, with three complete psalteries and 300 beads of *Paternosters*, are a substitute for a year of penance. Dunstan's Can. 72, A.D. 963.

(117). Leo de Pass. XIX. 5: Wise souls mortify their bodies and crucify their senses, and therein set before themselves God's will, loving themselves the more in proportion as for the love of God they love [*i.e.*, spare] not themselves. Ayliffe 279: I will not deny fasting to be a kind of penance for sin.

(118). Augustin ap. Gratian Caus. XXIII. Qu. v. c. 1: Whipping with a birch (verbera virgarum) is a mode of coercion employed not only by masters of liberal arts but by parents, and also by bishops in their tribunals. Gregory *Ibid.* I. Dist. XLV. c. 1: What shall be said of bishops who make themselves feared by giving blows? Theodori Poenit. I. II. 11 in H. & S. III. 178: Pueri qui fornicantur vapulentur.

(119). Ambros. ap. Gratian Caus. I. Qu. 1. c. 7; Concil. Agath. A.D. 506, *Ibid.* I. Dist. L. c. 7; Concil. Narbon. A.D. 589, Can. 6, directs an abbot to treat a clerk or other great person relegated to a monastery according to the bishop's direction, or otherwise to be suspended, because the offender is there for discipline, not for feasting. Eugenius *Ibid.* I. Dist. LXXXI. c. 7; Gregory *Ibid.* Caus. XVI. Qu. VI. c. 5: Seek out regular monasteries, and in them place presbyters who have gone wrong to do penance. Concil. Trosslei *Ibid.* Caus. XXIV. Qu. III. c. 22, and Caus. XXII. Qu. v. c. 19; Decret. Lib. v. Tit. XXXI. c. 4.

this case they are legally enforceable (120)—they stand on a lower level (121). Hence pecuniary penances are not allowed at all after two relapses (122), nor in the reserved cases (123), nor may the money obtained from them be applied by spiritual judges to their own uses (124), but only in almsgiving (125), founding or endowing Churches or hospitals, and in purchasing the freedom of captives.

### Vindictive Severity—Penalties and Animadversion.

22. Vindictive severity is punishment inflicted on an unwilling subject as an act of public vengeance for the good of others, which cannot be relaxed upon repentance, and leaves a permanent stigma behind it. Such severity is of two kinds—

(120). 13 Ed. I. St. IV. c. 1, A.D. 1284 ; 9 Ed. II. St. 1, c. 2 ; Lynd. 96, 154.

(121). Isidor. ap. Gratian. Caus. XI. Qu. III. c. 72. Lynd. 261 : Qui non luit in corpore luit in bursa.

(122). Const. 9 Stratford, A.D. 1342.

(123). Const. 5 Thorsby, A.D. 1363 : The priest is to make no abatement of the penance, nor to convert it into a pecuniary penance, if perchance it be corporeal.

(124). Concil. Ensham A.D. 1009 : If any money arise on account of divine satisfaction, according as the wise men of the world have fixed the rule, that is to be applied, at the bishop's command, to purchasing prayers, to the relief of the poor, to the reparation of Churches, to the instructing, clothing, and feeding of them that serve God, and the purchasing of bells, books, and Church vestments. Alexander III. to Archbishop of Canterbury in Decret. Lib. V. Tit. XXXVII. c. 3 ; Concil. Lat. IV. A.D. 1215, *Ibid.* Lib. I. Tit. XXXI. c. 13 ; Const. 19 Othobon, A.D. 1268 ; Const. 12 Stratford, A.D. 1343, orders the money to be applied to the cathedral fabric.

(125). Clem. Epist. 2 ad Rom. c. 16 : Almsgiving lightens the weight of sin. Cyprian de Vest. Virg. c. 11 : Every man in proportion to his wealth ought by his patrimony to redeem his transgressions. De Laps. c. 35 : By the use of wealth the crime and faults may be redeemed. *Id.* ap. Gratian Caus. XXXIII. Qu. III. Dist. 1. c. 57 ; Augustin *Ibid.* c. 63 ; Ambros. *Ibid.* c. 76. Ambros. *Ibid.* I. Dist. LXXXVI. c. 13, says that almsgiving must begin with those of the household of faith. *Ibid.* c. 16 and 20, that it ought to be practised to relatives before others. Aug. Enchir. 72 : There are many kinds of almsgiving, in practising which we are ourselves assisted (adjuvamur). Concil. Clovesho A.D. 747, Can. 30. See *Ecclesiastical Sacraments*, § 2.

(1) temporal, and (2) spiritual. The power to inflict temporal penalties for vindictive purposes is no part of the Church's office as a divine society (126), but is a civil and imperial duty, which formerly belonged to the head of the Roman Church in places where he was temporal sovereign, and has at times been held by other prelates of the Church in different localities, in varying degree (127). It is otherwise with spiritual punishments which, directly or indirectly, have vindictive consequences. These the Church has divine authority to impose to maintain its own note of holiness; but because of their vindictive effects it is not called upon, or even justified, in imposing them without clear demonstration of their being deserved.

23. Among temporal punishments which have at one time or other been within the power of the prelates of the Church to inflict may be enumerated (128)—(1) branding, the punishment of slaves and of clerks guilty of forgery (129); (2) reduction to slavery (130), the punishment of insolvency, of not paying a

(126). Rom. XII. 19: Vengeance is Mine. I will repay, saith the Lord. The punishment of Ananias and Sapphira, in Acts. v. 5, was the act of God, not the sentence of St. Peter, who only spoke prophetically.

(127). Thus the Archbishops of Cologne, Mainz, and Triers were princes of the Empire, and had sovereign rights under the emperor. The Bishop of Durham was prince of the County Palatine of Durham, and had as such power of life and death. The Bishop of Sodor and Man had jurisdiction in the recovery of debts from the estates of deceased persons, in affiliation and maintenance cases, and the guardianship of minors under fourteen. See Ecclesiastical Courts Commission II. 322. And all bishops in this country, and many other spiritual bodies, for instance, the College of Vicars Choral at Easter, had, together with certain lords of manors, jurisdiction in probate and administration cases.

(128). Lynd. 261 enumerates deprivation of food (inedia Gratian I. Dist. XC. c. 10), flogging, reduction to slavery, forfeiture of effects, transportation, imprisonment, and, p. 321, solitary confinement, and branding.

(129). Urban III. in Decret. Lib. v. Tit. XX. c. 3. Ecclesiastical Courts Commission, A.D. 1883, vol. I. p. 52: In A.D. 1166, in a council at Oxford, certain heretics were tried, convicted, excommunicated, branded on the face, and expelled the kingdom.

(130). Concil. Aurel. 1 A.D. 511, Can. 4 ap. Gratian Caus. XXXVI. Qu. I. c. 3: Let one guilty of rape, who has fled to a Church . . . be reduced to

wer-gild (131), and certain other offences (132); (3) perpetual exile (133); (4) imprisonment (134) in a monastery (135) or elsewhere; (5) flogging, the punishment of false accusers (136); and

slavery, or have power to buy himself off. Urban II. A.D. 1089, *Ibid.* I. Dist. XXXII. c. 10; Concil. London A.D. 1108, Can. 10: Bishops . . . shall have their adulterous concubines [as slaves].

(131). Laws of Satisfaction 8, A.D. 725, decree that for violation of orders one share of the fine is to be paid to the bishop, one to the altar, and one to the murdered clerk's gild-clergy. Alfred's Laws, A.D. 877, Pref.; Concil. Tribur. A.D. 895, in Decret. Lib. v. Tit. XXXVIII. c. 2: Let the composition-money for a murdered priest be paid to the bishop to whose diocese he belonged, so that the bishop apply one-half of his wer-gild to the parish over which he presided, and the other half in alms to himself.

(132). Baeda Poenit. III. 3, in H. & S. III. 327: If a girl under twenty and a young man have been incontinent, let them do penance for three Lents and the weekly fast days. If because of this sin they have been reduced to slavery, then forty days only. Concil. London A.D. 1108, Can. 16: The bishops shall take away all the movable goods of such [clergy] as shall offend herein, and also their concubines with their goods.

(133). Leo ap. Gratian I. Dist. LXIII. c. 23: Any one contravening this rule we order to be excommunicated, and, unless he repent, to be consigned to perpetual exile. Alfred's Law 12, A.D. 877; Decret. Lib. v. Tit. XXVII. c. 2, and Coelestin. III. *Ibid.* Lib. II. Tit. I. c. 10, leaves this to the temporal power. Edward's Law 7, A.D. 1064.

(134). Alexander III. to Bishop of London in Decret. Lib. III. Tit. XVI. c. 1: If it be necessary, let them imprison and afflict him, that he may be compelled to restore the stolen money. *Id.* to Bishop of London *Ibid.* Lib. v. Tit. XXXIX. c. 35, directs the incarceration of a clergyman who would escape from a monastery. Honorius III. *Ibid.* Tit. XI. c. 5: Such persons, if you think well, you must imprison in durance vile. Const. 21 Boniface, A.D. 1261: Let every bishop have one or two prisons in his bishopric for the safe-keeping of clerks, according to canonical censure. Const. 1 Islep, A.D. 1351. According to Lingard, vol. iii. p. 126, chap. 3 Edward III. in 1344 A.D., granted that clerks convicted of any other capital crime than treason should be delivered to their ordinaries, to be condemned by them to perpetual imprisonment and penance.

(135). Concil. Aurel. III. A.D. 538, Can. 7 ap. Gratian I. Dist. LXXXI. c. 10: Let a clerk guilty of adultery be placed in a monastery for the rest of his days. Concil. Lat. III. A.D. 1179, Can. 11, in Decret. Lib. v. Tit. XXXI. c. 4, prescribes it as a punishment for unnatural offences.

(136). Hadrian ap. Gratian Caus. v. Qu. I. c. 1.

(6) forfeiture of goods and chattels (137). In the States of the Church, prelates, as being representatives of the Pontiff who had sovereign rights, could inflict all these penalties. In this country, bishops had of old the same power when they sat in judgment with the sheriff in the Hundred Court (138); but since the Conquest their power to inflict temporal penalties has been confined to those in their *mund* or protection, including (1) their own lay dependents, where they possess the privileges of *sac*, *soc*, *toll*, *team*, and *infangthef* (139); and (2) their clerical dependents, *i.e.*, the clergy within their jurisdiction (140).

24. The only spiritual punishment which is directly vindictive, if degradation and the anathema are excepted, is the incapacity to receive or exercise order set up by irregularity, whether the irregularity arises from the iteration of the sacrament of baptism, confirmation, or order, or from the infamy due to the party's own crime (141). This incapacity is not relaxed upon repentance, and can only be got rid of by means of dispensation. Several forms of spiritual severity, nevertheless, lead to consequences which are of a vindictive nature, because they do not benefit the individual, but have only the public good in view. These are usually spoken of as animadversion. Such is (1) the greater excommunication, the sequel

(137). Gratian I. Dist. LXIII. c. 22: Let all who act contrary to this decree be involved in anathema, and their goods be confiscated, unless they repent. Alfred's Law 12, A.D. 877; Concil. London A.D. 1108, Can. 10, directs the chattels of presbyters who refuse to separate from their wives to be forfeited to the bishop.

(138). See *Spiritual Courts*, § 6.

(139). Edward's Law 14, A.D. 1064: Let archbishops, bishops, earls, barons, and all that have sac and soc, toll, team, and infangthef, have their knights and proper servants. . . . And if they incur any forfeiture, and a complaint of the neighbourhood rise against them, they should oblige them to what is right in their own court; they, I say, who have sac, soc, toll, team, and infangthef.

(140). Because ordination formerly changed the ordinand's allegiance, villagers were not allowed, by Const. 16 Clarendon, A.D. 1164, to be ordained without the lord's consent,—see *Order*, note 289,—nor in France any one without the king's leave.

(141). See *Order*, § 52.

to which, if it fails to bring the offender to satisfaction, is by the law of this country imprisonment, but the imprisonment is now limited to six months (142). Such is (2) condemnation for heresy, the sequel to which, unless there is recantation, was in former times delivery to the secular arm to be burnt (143). This consequence has now also been abolished (144). Such is (3) the public suspension or deprivation of clergy, which deprives them of the right to receive the offerings of the people, and in this country may, if the judge so order, deprive them of the enjoyment of a foundation benefice. Such is also (4) degradation, the solemn act of deposition, which deprives them of all clerical position and privileges.

25. The rule of the Church, as has been already seen, forbids clergy to undergo penance otherwise than in private (145), requiring, instead, that such clergy as are found to be guilty of offences calling for discipline, should be removed from their position and from participation in clerical offices for a season, during which they should do penance in private. This removal was formerly called deposition (146), occasionally degrada-

(142). 53 Geo. III. c. 127.

(143). 2 Hen. IV. c. 15, A.D. 1400; 2 Hen. V. c. 7, A.D. 1414.

(144). 25 Hen. VIII. c. 14.

(145). Concil. Carthag. V. A.D. 401, Can. 11: If presbyters or deacons are convicted of any grave fault requiring their removal (eos removeri) from the ministry, let not hands be laid on them, as on penitents or faithful laymen. Gratian I. Dist. L. c. 65, 66; Concil. Araus. A.D. 441, Can. 4, and Concil. Arelat. II. A.D. 443, Can. 29, allow private penance to be given to a cleric upon request. Concil. Tolet. 13, A.D. 683, Can. 10: Penance is undertaken as a remedy against sin, but the priesthood is retained, because of cleansing, that it may flourish by the good conduct of the priest and the fruit of good works, whereby he extinguishes in himself the motions of sin, and potentially destroys the reign of sin in others by his preaching. What, then, shall prevent a priest living thus, as we have premised, from offering the bread of propitiation at the divine altar, after submitting to the rules of penance? Leofric Missal, p. 240, forbids hands to be laid on a presbyter as a penitent. Clemens III. in Decret. Lib. V. Tit. XXXVIII. c. 7.

(146). Socrates I. 24, and the Apost. Canons 25, 29, 52, mention deposition as the clerical equivalent of lay suspension. Theodori Poenit. I. VI. in Haddan and Stubbs III. 180: If any one has been ordained by heretics, and is found free from blame, he ought to be reappointed (iterum ordinari).

tion (147), and is of three degrees, which are now called respectively (1) suspension, (2) deprivation, and (3) deposition or degradation.

26. Suspension (148), called also sometimes deprivation, because it is a form of deprivation (149), or reduction to strangers' communion (150), and also temporary deposition, consists in removal from the clerical office and clerical duties in the part of the Church to which the offender belongs, because of some public offence (151). When it is a removal from the clerical office for a time only, it is technically called *suspension;* when a removal from some clerical duties, *regradation*, or going back in order (152). Regradation is the mildest form of clerical punishment, and of it there are several kinds, such as (1) being deprived of the exercise of order, whilst allowed to retain the honour and dignity of it in the Church (153); (2) being deprived

Otherwise let him be put out of the ministry (deponi oportet). *Id.* I. IX. 1, *Ibid*, p. 184: Bishops, priests, and deacons guilty of fornication ought to be deposed from office, and do penance according to the bishop's ruling; yet let them not be excluded from communion. Egbert's Ans. XV. A.D. 734.

(147). Concil. Elib. A.D. 305, Can. 20 ap. Gratian I. Dist. XLVII. c. 5: Placuit eum degradari et abstineri. Stat. Eccl. Ant. A.D. 505, Can. 56, 57: If he will not ask pardon, degradetur, nor let him be restored to office without satisfaction. Theodori Poenit. I. IX. 1 l. c.: Degradari debent. Rabanus ap. Gratian I. Dist. L. c. 34: A proprio gradu decidant. Stremler des Peines Ecclés, p. 38; Craisson, § 6346.

(148). Concil. Ilerd. A.D. 523, ap. Gratian I. Dist. L. c. 52.

(149). Lynd. 99, 127, 195: In the phrase, When proceedings are taken for deprivation, deprivation means the particular degree of suspension required by the laws ecclesiastical.

(150). Apost. Can. 34 orders the wants of strange clergy to be supplied, but themselves not to be received to Communion unless they have commendatory letters. Strangers' Communion is mentioned by Concil. Agath. A.D. 506, Can. 2; conf. Euseb. VI. 43; Bona Rer. Lit. Lib. II. c. 19, § 6; Bingham Lib. VII. c. 3, § 7; Devoti Lib. I. Tit. VIII. § 19.

(151). Hieronym ap. Gratian I. Dist. L. c. 15, 19, 20; Gregory *Ibid.* c. 16; Pseudo-Isidor. *Ibid.* c. 14; Egbert's Poenit. V. in Haddan and Stubbs. III. 421; Lynd. 340; Devoti Lib. IV. Tit. XX.

(152). Concil. Tolet. I. A.D. 400, Can. 4; Concil. Aurel. III. A.D. 538, Can. 27; Concil. Matiscon I. A.D. 581, Can. 10 and 19.

(153). Concil. Ancyr. A.D. 314, ap. Gratian I. Dist. L. c. 32, allows priests

of the discharge of some duties belonging to order, but not of all (154), as for a presbyter to be limited to discharging the deacon's duties, or for a deacon to be confined to discharging those of the sub-diaconate (155); (3) being deprived of rights of seniority in the same order (156); and (4) being deprived of all hope of advancement, without being reduced in rank (157).

27. When suspension amounts to more than regradation, it may be either (1) suspension from order only and the power of offering (158), or (2) from office also or the charge of a cure of

and deacons who have sacrificed, and afterwards given proof of a good fight, to retain their honour and dignity in the Church, but forbids such priests to offer, to preach, or to do any other priestly office, and such deacons to give the Lord's body or the cup, or to read the Gospel. Concil. Nic. A.D. 325, Can. 8, allows the Novatian clergy to remain in the same order; but if there is already a Catholic bishop, the Novatian bishop shall have the honour of a bishop. The synod, in Socrat. I. 9, permitted Meletius to remain in his own city, but decreed that he should exercise no authority to ordain or to nominate for ordination. Concil. Agath. A.D. 506, Can. 43; Concil. Epaon. A.D. 517, Can. 2; Concil. Trull. A.D. 691, Can. 26.

(154). Concil. Neocaesar. A.D. 314, Can. 9; Stat. Eccl. Ant. A.D. 505, Can. 68.

(155). Concil. Neocaesar. A.D. 314, Can. 10, ordered an incontinent deacon to be reduced to the rank of a sub-deacon. Also Concil. Tolet 1, A.D. 400, ap. Gratian I. Dist. L. c. 68. The same council, Can. 4, *Ibid.* I. Dist. XXXIV. c. 17, ordered a sub-deacon who had married again to be reduced to the rank of a reader or door-keeper.

(156). Socrates I. 9, relates that the Nicene Council directed that the clergy who supported Meletius should continue to hold their rank and ministry, but regard themselves as inferior to all who had been previously ordained in every place and Church by Bishop Alexander. Concil. Turon. 1, A.D. 461, Can. 4; Concil. Trull. A.D. 692, Can. 7; Concil. Nic. A.D. 787, Can. 5.

(157). Concil. Taurin. A.D. 401, Can. 8; Concil. Tolet. 1, A.D. 400, c. 1; Concil. Araur. 1, c. 24; Concil. Andegav. A.D. 453, Can. 54.

(158). Concil. Neocaes. A.D. 314, Can. 1, mentions suspension from offering, but not from other functions. Also Innocent I. A.D. 404, ap. Gratian I Dist. LXXXI. c. 6. Gregory of Tours Hist. Franc. VIII. c. 20, relates that Bishop Ursacius was suspended from his episcopal order, but that nevertheless the administration of his Church was left to him. Concil. Carthag. V. A.D. 401, in Codex Eccles. Afric. Can. 76, directs that a bishop

souls (159), and it may (3) include in addition suspension from benefice (160); but being the clerical substitute for simple excommunication it does not usually entail exclusion from communion (161). Its effect is not to take away the capacity to minister (162), but to make acts of ministration unlawful, and the person who performs them irregular if it is a suspension from order, and acts of jurisdiction nullities if it is a suspension from office (163).

28. A suspended clerk is disabled by the suspension from receiving the tithes and spiritual offerings of the people (164),

who without adequate cause fails to appear at a synod shall be content with the communion of his Church [*i.e.*, shall be excluded from offering].

(159). Concil. Aurel. 1, A.D. 511, Can. 9 ap. Gratian 1 Dist. LXXXI. c. 14, directs a presbyter or deacon to be deprived of his office and a share [in the distributions], but permits him to minister by request. Gregory *Ibid.* 1 Dist. L. c. 10: Ab officii honore depositus laicam tantummodo communionem accipiat. Alexander II. A.D. 1065, *Ibid.* 1 Dist. LXXXI. c. 16, and Urban II. A.D. 1095, *Ibid.* Caus. I. Qu. V. c. 3, mention both order and office. Lynd. 39 says there are twenty-four different kinds of suspension, and that unless expressly named the least penal is always to be understood.

(160). Cyprian Ep. 27, 3: In the meantime let [the accused clergy] abstain from the monthly division. Concil. Aurel. III. A.D. 538, Can. 7; Concil. Narbon, A.D. 589, Can. 11 and 13.

(161). Cyprian Ep. 48 (Oxf. 52), says that Evaristus, from being a bishop, has not even remained in lay communion. *Ibid.* 3, that the crimes of Novatus were so great that it was certain he would not only be turned out of the presbytery, but also restrained from communion. Apost. Can. 23 ap. Gratian 1 Dist. LXXXI. c. 12: Let a bishop, presbyter, or deacon who is taken in fornication, or perjury, or stealing be deposed but not separated from communion; for the Scripture saith: Thou shalt not avenge twice for the same offence. *Ibid.* Can. 15: Let him receive lay-communion. Theodori Poenit. I. IX. 1 in H. and S. III.; Egbert's Poenit. V. 1 *Ibid.* III. 421.

(162). Concil. Aurel. A.D. 511, Can. 12, says that clergy whilst doing penance may lawfully baptize in case of necessity. Gregory IX. Decret. Lib. V. Tit. XXVII. c. 10; Lynd. 12.

(163). Ayliffe 241; Craisson, § 6584.

(164). Alexander II. ap. Gratian 1 Dist. LXXXI. c. 16: Nec in choro psallentium maneat, nec aliquam portionem de rebus ecclesiasticis habeat. Const. 21 Peckham, A.D. 1281; Lynd. 120, 163, 182; Ayliffe 221.

but he is not excluded from the simple benefice or foundation endowment unless he is expressly excluded therefrom by one who has power to exclude him, as a visitor in spirituals (165). What is sometimes spoken of as suspension from benefice only is not properly suspension at all, but subtraction of the fruits of an endowment (166); and although in this country it extends to tithes because tithes form part of the foundation endowment, it does not disable from participating in offerings and distributions (167).

29. The period of time for which temporary suspension is imposed varies according to the nature of the offence and the custom of the country (168). In this country it was usually the same as the layman's period of suspension from entrance to the Church, but the penitential period for remedial purposes was considerably longer (169). When laymen were allowed to be restored to communion after a short period of exclusion, clergy were also allowed to be restored to their office after a short suspension therefrom. In the seventh century the customary period of suspension from entrance to the Church was one-third of the canonical time of penance (170), and the same

(165). Lynd. 113: When the fee is involved it is true what is said, that the discussion of it ought to be before the lord, otherwise it ought to be before the ordinary. Ayliffe 222: A person who is deprived of his distributions on the score of crime is not for that reason deemed to be deprived of the fruits of his prebend or benefice. In depriving *ab officio* the bishop *acts as* president of the local Church. To deprive *a beneficio*, the bishop must be the visitor of the parochial foundation or benefice, and his office as such must be promoted. Law's Forms 60; Craisson, § 6533. According to Ecclesiastical Courts Commission, 1883, in France a curé may be suspended from office and from the right to wear the clerical garb, but this does not deprive him of his benefice.

(166). Const. 19 Peckham, A.D. 1281; Const. 4 Stratford, A.D. 1342; Lynd. 306, 134.

(167). Craisson § 6577.

(168). Authorities ap. Gratian Caus. XXVI. Qu. VII.

(169). Thus Egbert's Poenitential in Haddan and Stubbs III. 419, prescribes for capital crimes that a layman shall do penance four years, a clerk five, a sub-deacon six, a deacon seven, a presbyter ten, a bishop twelve years.

(170). Thus when the penance was fixed at one year, the suspension

rule appears to have obtained for the time of suspension from office of clergy ([171]). Subsequently, when laymen were restored to communion so soon as they had come to satisfaction, a like indulgence was extended to clergy other than those guilty of public or notorious crimes, who (unless they had been guilty of irregularity by officiating) were only suspended until they made satisfaction and undertook to do penance privately for the remainder ([172]).

30. Under the parochial system the duties of an incumbent whilst he is suspended from the discharge of his office are performed by a temporary vicar ([173]); and since by English Constitutions temporary vicars may not be appointed for a longer period than five years without the bishop's special leave ([174]), and in no case for a longer period than seven

from entrance to the Church was for one Lent of forty days, which counted as a third of a year. See Theodori Poenit. I. II. 8 in Haddan and Stubbs III. 178; *Id.* XIV. 24, *Ibid.* 189; I. XV. 4, and Baedae Poenit. *Ibid.* 327. For an offence for which three years was the ordinary time of penance, the period of suspension was one year. For an offence for which seven years was the period of penance, the period of suspension was two to three years. For offences which required fifteen or twenty years of penance, the term of suspension was five to seven years. Theodori Poenit. I. II. 1 prescribes a year's penance for simple fornication; and Concil. London A.D. 1108, Can. 9, orders that priests who choose to leave their women and to serve God shall have vicars to officiate for them during the forty days in which they are to desist from their office. Theodore I. V. 10 prescribes a penance of twelve years, of which four are to be extra ecclesiam, and I. V. 14 another penance of twelve years, of which three are to be extra ecclesiam; I. VIII. 12 a penance of ten years, but provides that after three years, if he has given proof of true repentance, the bishop may treat him with leniency.

(171). Egbert's Poenit. V. 2 imposes twelve years' penance on a bishop guilty of simple fornication, but allows an abatement after three or four years. Lynd. 11, 39, 281.

(172). Alexander II. ap. Gratian I. Dist. LXXXI. c. 16: Decidat proprio gradu usque dum ad satisfactionem veniat. Concil. London A.D. 1108, Can. 9, and Alexander III. in Decret. Lib. I. Tit. XI. c. 4, impose on him some suitable penance, and direct him when part of the penance has been performed to use his order.

(173). Innocent III. A.D. 1199, in Decret. Lib. I. Tit. XXXIV. c. 10.

(174). Const. 7 and Otho, A.D. 1237; Const. 20 Othobon, A.D. 1268;

years (175), a suspension for more than five years renders the office itself liable to forfeiture, and a suspension for more than seven years necessarily forfeits it. This degree of suspension is ordinarily termed deprivation.

31. Suspension, like excommunication, may not be imposed without a previous monition (176), except in cases in which the canons dispense with warning or in the case of open offences (177), nor may it be imposed on a bishop unless the canon which orders it specially makes bishops subject to its provisions (178). Simple suspension is incurred, *ipso facto*, by burying an excommunicated usurer (179), marrying those related within the forbidden degrees (180), electing a disqualified person as bishop (181), or being an habitual drunkard (182). A suspended clerk who meddles with the duties of his office without a dispensation becomes irregular (183).

32. The cases in which suspension extends to complete deprivation are: (1) when an excess has been committed of such a nature as to call for suspension for a longer period than five or seven years, in the former case in the bishop's discretion, in the latter by sentence of law; (2) when one who is sus-

Const. 3 Stratford, A.D. 1343. Concil. Worms. A.D. 868, Can. 10 ap. Gratian Caus. II. Qu. v. c. 26, had prescribed five years' suspension for a bishop or priest guilty of homicide, adultery, theft, or fraud. According to Concil. Meldens. A.D. 845, *Ibid.* Caus. x. Qu. II. c. 5, five years was the usual time for a precaria.

(175). Lynd. 238. See *The Parish.*

(176). Concil. Lat. III. A.D. 1179, Can. 6 in Decret. Lib. II. Tit. XXVIII. c. 26; Const. 15 and 26 Langton, A.D. 1222; Sext. Lib. v. Tit. XI. c. 13; Lynd. 13, 18, 127.

(177). Const. 5 Peckham, A.D. 1279; Lynd. 15. See *Discipline Generally*, § 6.

(178). Concil. Lugdun. A.D. 1245, in Sext. Lib. v. Tit. XI. c. 4.

(179). Concil. Lat. III. A.D. 1179, in Decret. Lib. v. Tit. XIX. c. 3.

(180). Concil. Lat. IV. A.D. 1215; *Ibid.* Lib. IV. Tit. III. c. 3.

(181). Concil. Lat. III. *Ibid.* Lib. I. Tit. VI. c. 7, § 3; Innocent II. to convent of Winchester, A.D. 1205, *Ibid.* c. 25; Concil. Lat. IV. *Ibid.* c. 43, 44.

(182). Concil. Lat. IV. *Ibid.* Lib. III. Tit. I. c. 14.

(183). Concil. Lugdun. A.D. 1274, in Sext. Lib. v. Tit. XI. c. 1; Const. 1 Peckham, A.D. 1279.

pended (184), or excommunicated (185), has intermeddled with sacred offices or been disobedient to a judicial ruling or monition (186); (3) when it is expressly ordered by sentence of law, as for simony (187), heresy (188), sacrilege (189), homicide (190), self-mutilation (191), falsification of ecclesiastical documents (192), intrusion into another's benefice (193), holding two benefices at once without a dispensation (194), unnatural crime (195), and incest (196). In all these cases, however, a declaratory sentence

(184). Apost. Can. 29, quoted above, note 61; Gregory ap. Gratian I. Dist. L. c. 10: It has reached our ears that after being deposed from the priestly rank for a criminal offence he has presumed to fulfil the ministry of the priesthood. . . . If such be the case . . . let him be deprived of communion and reduced to penance. Concil. Antioch. A.D. 341, Can. 4, *Ibid.* Caus. XI. Qu. III. c. 6; Decret. Lib. V. Tit. XXVII. c. 3.

(185). Syn. Rom. A.D. 878, ap. Gratian Caus. XI. Qu. III. c. 109: Those priests who, having been excommunicated in the time of our predecessor Nicolaus, have presumed to meddle with the holy ministry, have brought on themselves the sentence of damnation. Decret. Lib. V. Tit. XXVII. c. 6.

(186). Concil. Agath. A.D. 506, Can. 2 ap. Gratian I. Dist. L. c. 21; Innocent III. in Decret. Lib. V. Tit. XXXVII. c. 11.

(187). Cap. 16 Theodulf, A.D. 994.; Urban II. A.D. 1095, ap. Gratian Caus. I. Qu. V. c. 3; Const. 1 Reynolds, A.D. 1322; Lynd. 33.

(188). Leo ap. Gratian Caus. I. Qu. I. c. 42; Innocent *Ibid.* c. 73.

(189). Const. 1 Reynolds, A.D. 1322; Lynd. 33.

(190). Martin. Brac. ap. Gratian I. Dist. L. c. 8; Theodori. Poenit. I. IX. 8 in Haddan & Stubbs III. 185; Decret. Lib. V. Tit. XII. c. 6.

(191). Concil. Nic. A.D. 325, Can. 1.

(192). Concil. Agath. A.D. 506, Can. 50 ap. Gratian I. Dist. I. c. 7; Decret. Lib. V. Tit. XX.; Const. 1 Reynolds, A.D. 1322; Lynd. 33.

(193). Northumbrian Priests, Can. 2, A.D. 950; Conf. Edgar's Law 10, A.D. 960; Cap. 14 & 15 Theodolf, A.D. 994; Gratian Caus. II. Qu. I. c. 7; Concil. London A.D. 1175, Can. 12; Const. 1 Langton, A.D. 1222; Decret. Lib. V. Tit. XXXI. c. 6, and Lib. III. Tit. VIII. c. 1; Const. 5 Winchel. A.D. 1305; Const. 11 Otho, A.D. 1237; Const. 10 Othobon, A.D. 1268; Lynd. 233, 237, 319.

(194). Concil. Lat. III. A.D. 1179, Can. 29 in Decret. Lib. III. Tit. V. c. 5; Concil. Lat. IV. A.D. 1215, *Ibid.* c. 28; *Discipline Generally*, note 158.

(195). Concil. Westminster A.D. 1102, Can. 28; Concil. Lat. III. A.D. 1179, in Decret. Lib. V. Tit. XXXI. c. 4.

(196). Gratian I. Dist. XXVII. c. 9; Augustin *Ibid.* Caus. XXXII. Qu. VII. c. 11; Const. 17 Peckham, A.D. 1281; spiritual incest a fortiori, *Ibid.* Caus. XXX. Qu. I. c. 8–10, and *Excesses*, § 33.

is necessary by a spiritual judge before the office is vacant *de facto* (197), because doubt may otherwise be felt as to the existence of the crime (198). In all cases of deprivation, moreover, the bishop is required to make some provision for the temporal needs of the deprived person (199), since the mendicancy of the clergy is the bishop's disgrace (200).

33. Deposition (201), formerly called deposition for ever (202), or deposition without hope of restitution (203), or dejection (204), is not merely suspension from the exercise of order and office in some particular part of the Church to which the offender is attached, but the total removal from the ranks of order and from the enjoyment of all clerical privileges (205). Like the greater

(197). Const. 20 Edmund, A.D. 1236 ; Const. 5 Boniface, A.D. 1261; Const. 3 Winchel. A.D. 1298 ; Const. 3 Mepham. A.D. 1328 ; Lynd, 13, 15, 16, 77, 136.

(198). Decret. Lib. v. Tit. XXXIX. c. 26 ; Lynd. 16, 308.

(199). Syn. Rom. A.D. 826, Can. 14 ap. Gratian I. Dist. LXXXI. c. 7 : Let a priest or any other member of the ecclesiastical order, if found guilty of such an offence as to necessitate his being deprived, be deposed and be provided for by the care of the bishop. Gregory *Ibid.* Caus. XVI. Qu. VI. c. 5 : A sufficient stipend ought to be provided for those who are consigned to penance. In early times this was usually done by placing them in a monastery. Ambros. *Ibid.* Caus. I. Qu. I. c. 7 orders this for one simoniacally ordained. Concil. Trosslei *Ibid.* Caus. XXIV. Qu. III. c. 2 ; Pseudo-Augustin *Ibid.* Caus. XXII. Qu. V. c. 19 ; 1 Dist. L. c. 7 and 58 ; 1 Dist. LXXXI. c. 8 ; Decret. Lib. v. Tit. XXXI. c. 4. *White* v. *Baldwin*, No. 92, in Rothery's Report ; Stremmler des Peines Eccles. p. 33 ; Craisson, § 6336.

(200). Apost. Can. 59 ; Hieronym. ap. Gratian I. Dist. XCII. c. 23.

(201). Sometimes degredari, more often omnino deponi, or omnino de proprio gradu dejici, deordinari, ab ordine cleri amoveri. Pseudo-Isidor. ap. Gratian Caus. XI. Qu. I. c. 31, a clero cessare. Alexander III. in Decret. Lib. II. Tit. I. c. 4 : Perpetuo removeri a ministerio.

(202). Const. 3 Edmund, A.D. 1236.

(203). Concil. Lat. I. A.D. 1123, Can. 10 ap. Gratian I. Dist. LXII. c. 3.

(204). Concil. Lat. III. A.D. 1179, in Decret. Lib. v. Tit. LXXXI. c. 4.

(205). Devoti Lib. I. Tit. VIII. § 21 shows that up to the end of the 12th century degradation in the sense of handing over to the secular arm was an exceptional proceeding. Innocent III. in Decret. Lib. v. Tit. XX. c. 8 ordered as a punishment for falsification. See Maskell, Mon. Rit. II. p. CLX.; Craisson, § 6337.

excommunication, it may be inflicted either (1) non-solemnly, by a prelate or judge, when it is called *verbal* degradation, or (2) solemnly, as the act of the whole participating Church, when it is called *actual* degradation. In verbal degradation the judge decrees that a clerk be removed from his clerical position and adjudges him to be delivered to the lay forum (206). Actual degradation is the solemn ceremony in execution of the sentence, wherein the clerk is deprived of the insignia of his order and handed over to the secular arm (207).

34. Formerly twelve bishops were required for the solemn degradation of a bishop, six for that of a presbyter, three for that of a deacon (208), and a smaller number for the degradation of one in minor orders (209). Mitred abbots, prelates, and dignitaries conversant with the law are now allowed to take the place of bishops (210) provided they are not merely assessors but have a definitive voice (211). Degradation is only allowed for some enormous crime (212), or for incorrigible miscon-

(206). Coelestin. III. in Decret. Lib. II. Tit. I. c. 10, directs a clerk to be first deposed, then if contumacious to be excommunicated, if still obstinate to be anathematized, and finally to be handed over to the lay judge for exile. Boniface VIII. in Sext. Lib. V. Tit. IX. c. 2.

(207). Pseudo-Isidor. ap. Gratian Caus. XI. Qu. I. c. 31 directs lower clergy who conspire against bishops and priests to be removed from the clergy and handed over to the secular arm. Alexander III. in Decret. Lib. II. Tit. I. c. 4 declares that it is not every excess which deserves handing over to the secular arm. See the Forma degredandi clericum in Maskell's Monumenta Ritualia II. p. 333, and in Reichel's English Liturgical Vestments 17, note 3.

(208). Concil. Carthag. I. A.D. 348, Can. 11 ap. Gratian Caus. XV. Qu. VII. c. 5; Concil. Carthag. II. A.D. 390, Can. 10, *Ibid.* c. 6; Concil. Carthag. III. A.D. 397, Can. 8, *Ibid.* c. 7; Stat. Eccl. Ant. A.D. 505, Can. 23, *Ibid.* c. 8; Boniface VIII. in Sext. Lib. V. Tit. IX. c. 2.

(209). Boniface l. c.

(210). Concil. Trident, Sess. 13, Cap. 4 de Refor.

(211). Gregory in Decret. Lib. II. Tit. XXVII. c. 3: No one can be removed from the sacerdotal rank except for a just cause by the concordant sentence of the bishops (*sacerdotes*).

(212). Alfred's Law 12, A.D. 877: If a priest slay another man let all that he possesses and his habit be seized, and let the bishop degrade him. Const. 16 Clarendon, A.D. 1164: The king also decreed that bishops should

duct (213), such as heresy and apostasy persisted in (214), falsification of apostolical letters (215), permeditated homicide (216), and the abuse of the confessional for sacrilegious purposes (217); but modern English statute law permits one who is in holy orders to degrade himself (218).

### Relaxation of Censures—Reconciliation or Absolution.

35. When a censure has been imposed for a definite period by way of vindictive penalty, such as a suspension from communion or from office for a month, it is relaxed *ipso facto* at the expiration of the time named (219), and it may even be so far relaxed, or rather dispensed with, before the time has expired that the offender may be re-admitted to his rank in the Church or the exercise of his order in a place where the cause of the censure is unknown (220). A censure, however, imposed indefinitely to bring an offender to repentance, such as excommunication or the interdict, is not relaxed of itself, neither by the death of the offender (221), his amendment (222), the death of the imposer (223), or even by an alteration of the law (224),

degrade clerks in presence of the king's justice whom they had found guilty of any public crime, and then deliver them to the king's court to be punished. Innocent III. in Decret. Lib. v. Tit. XL. c. 27, and Tit. XXVII. c. 2; Boniface VIII. l. c.; Lynd. 322.

(213). Lynd. 322.

(214). Decret. Lib. v. Tit. VII. c. 9, 15; Boniface VIII. in Sext. Lib. v. Tit. II. c. 1 and 4; Lynd. 296.

(215). Innocent III. in Decret. Lib. v. Tit. XX. c. 7, and Tit. XL. c. 27.

(216). Concil. Lugdun. A.D. 1274, in Sext. Lib. v. Tit. IV. c. 1.

(217). Devoti Lib. I. Tit. VIII. § 23; Craisson, § 6348.

(218). See *Order*, § 40.

(219). Cyprian Ep. 9, 2, quoted *Discipline Generally*, note 66. Craisson, § 6437, 6587.

(220). Lynd. 290 says a suspended clergyman may with permission officiate in another diocese. *Id.* p. 75; Craisson, § 6506, 6449.

(221). Innocent III. in Decret. Lib. v. Tit. XXXIX. c. 28 and 38.

(222). Clement III. *Ibid.* c. 15; Gregory IX. *Ibid.* c. 58.

(223). Innocent III. to Bishop of Ely, *Ibid.* Lib. I. Tit. XXXI. c. 11.

(224). Craisson, § 6436.

but continues in force until it is ended in a regular manner (225). In ancient times the ending of a censure was called peace (226), relaxation, forgiveness, or communion (227). It is now generally called reconciliation or absolution.

36. Reconciliation or absolution appears thus to be spoken of in two senses: (1) to express reconciliation with God, which is called *extra-judicial* (228) or sacramental absolution, and is effected in the forum of penance by means of the prayers of the Church upon the sinner's true repentance; and (2) to express reconciliation with the Church, which is called *judicial* or ecclesiastical absolution, and is given by one having jurisdiction in the Church. The latter ought to follow after reconciliation with God, and therefore ought not to be granted too readily (229). The two absolutions, though parts of one whole, are distinct from each other. Sacramental absolution unloosens the bond of guilt; ecclesiastical absolution relaxes the bond of censure (230).

37. The proper person or authority to relax an ecclesiastical

(225). Augustin ap. Gratian I. Dist. L. c. 23: A priest can well be restored to his honour after penance done, and c. 28. Socrates II. 8 relates that in 341 A.D. Athanasius was accused of having acted contrary to the canon in resuming his episcopal authority without the license of a general council of bishops; II. 24 relates that Athanasius took care to avoid such a charge afterwards. Concil. Tolet. IV. A.D. 633, ap. Gratian Caus. XI. Qu. III. c. 65: A bishop, priest, or deacon unjustly deposed, if found innocent in a second synod, cannot regain his lost position unless he receives it back from the bishop's hand. Innocent III. A.D. 1198, in Decret. Lib. V. Tit. XXXIX. c. 39, says excommunication must be held to be in force until it is shown to have been removed.

(226). Cyprian Ep. 18; 32, 2; 16; Ayliffe 20. See *Penance*, § 12.

(227). Socrates I. 26 relates that Arius prayed "to be reunited to our Mother the Church;" II. 24 says that Maximus, Bishop of Jerusalem, calling a council, A.D. 349, restored Athanasius to communion; II. 26, that a synod in Egypt did the same.

(228). Ayliffe 18; Law's Forms, 137.

(229). Ambros. ap. Gratian Caus. XXIII. Qu. IV. c. 33.

(230). Innocent III. A.D. 1199, in Decret Lib. V. Tit. XXXIX. c. 28, says that Christ first raised Lazarus and then told the disciples to unbind him. Ayliffe 18.

censure is the same person or authority who imposed it (231), his delegate (232), successor (233), or superior (234). Censures imposed by law or by a general sentence (235) may be relaxed by any bishop or presbyter who has jurisdiction (236), provided they do not extend to the reserved cases (237). . An incumbent or any presbyter who has authority to give sacramental absolution can, therefore, relax a sentence of the lesser excommunication (238), but not a sentence of clerical suspension or interdict (239), because these are reserved to the bishop as belonging to the outer tribunal. At the hour of death every presbyter has the same power (240), yet so that if the sick man recovers he is under obligation to report his absolution to the authority which imposed the censure, failing which he relapses into it again (241). Women, the aged, children, and the infirm (242) are excepted from the rule if they have been absolved by a

(231). Ayliffe 18; Gratian Caus. XXXIII. Qu. III. Dist. VI. c. 1; Innocent III. in Decret. Lib. I. Tit. XXXIII. c. 6.

(232). Concil. Nic. A.D. 325, Can. 5; Gregory IX. in Decret. Lib. I. Tit. XXXI. c. 20.

(233). Concil. Epaun. A.D. 517, Can. 28 ap. Gratian Caus. XI. Qu. III. c. 40: If a bishop is taken away by death before the absolution of one condemned, after correction and penitence his successor may absolve him. Sext. Lib. I. Tit. XVII. c. 1.

(234). Innocent III. in Decret. Lib. V. Tit. XXXIX. c. 40, and Lib. I. Tit. XXXI. c. 8; Gratian Caus. II. Qu. I. c. 11.

(235). Craisson, § 6443.

(236). Innocent III. A.D. 1199, in Decret. Lib. V. Tit. XXXIX. c. 29.

(237). Clemens III. in Decret. Lib. V. Tit. XXXIX. c. 26; Gregory IX. *Ibid.* c. 58. By 25 Hen. VIII. c. 21 these cases are referred to the archbishop. See *Penance*, § 6.

(238). Craisson, § 6488.

(239). Craisson, § 6480.

(240). Clemens III. in Decret. Lib. V. Tit. XXXIX. c. 26; and Innocent III. to Bishop of Ely, A.D. 1204, *Ibid.* Lib. I. Tit. XXXI. c. 11; Boniface VIII. in Sext. Lib. V. Tit. XI. c. 22.

(241). Clemens III. in Decret. Lib. V. Tit. XXXIX. c. 13; Concil. Ebor. A.D. 1195, Can. 17; Boniface VIII. in Sext. Lib. V. Tit. XI. c. 22.

(242). Alexander III. *Ibid.* c. 6; Clement III. *Ibid.* Lib. V. Tit. XXXIX. c. 13, 17, 11, 29.

bishop, and likewise monks if they have been absolved by a bishop or by their own prior (243).

38. Besides the regular relaxation of a censure, which is only granted after amendment or imposition of penance, there are two other kinds of ecclesiastical absolution — one which is called precautionary (*ad cautelam*), the other absolution *with reincidence*. Precautionary absolution (244), which is stated to have been first introduced by Coelestine III. in the twelfth century, is absolution bestowed for safety's sake to ensure the efficacy of some other grant, which without it would be inoperative, or is bestowed to prevent a possible wrong being done. Of the former kind is the absolution which accompanies every indulgence, since an indulgence is unavailing to one who is out of the communion of saints; of the latter kind the absolution granted when an appeal is pending and there is reason for doubting whether the censure appealed against is deserved (245).

39. Absolution with reincidence (246) is absolution given as a temporary expedient or with a condition annexed. Such is the absolution given to penitents on Maunday Thursday to enable them to receive the Easter communion, or absolution given on condition that restitution is made within a certain time. In the former case the penitential status revives after the Easter communion has been made, in the latter if restitution has not been made at the end of the time limited.

40. Ordinarily, ecclesiastical absolution can only be given to the living (247), but if after death any one is found to have been unjustly censured, he may be declared unbound and his name

(243). Alexander III. *Ibid.* c. 2; Honorius III. *Ibid.* c. 50.

(244). Honorius III. *Ibid.* c. 52.

(245). Innocent III. A.D. 1202, *Ibid.* c. 40.

(246). Ad reincidentiam Devoti Lib. IV. Tit. XXI. § 6. Suarez holds that a censure may be suspended and be reimposed. This Liguori denies except for a new fault. Craisson, § 477, says that the non-fulfilment of the condition may be looked on as a new fault.

(247). Ayliffe 19.

entered on the diptychs of the dead (248). The same publicity should be given to the termination of a sentence of excommunication, suspension, or the interdict as was given to the original sentence of censure (249). A purely vindictive penalty, such as clerical irregularity or loss of reputation, is not, however, got rid of by absolution, but by dispensation from its effects (250).

(248). Syn. v. A.D. 553, ap. Gratian Caus. XXIV. Qu. II. c. 6.
(249). Const. 28 Othobon, A.D. 1268.
(250). Stremler des Peines Ecclésiastiques, p. 231 ; Craisson, § 6470.

# VI.

# SPIRITUAL COURTS.

## Disciplinary Procedure.

1. From the two keys—the key of interpretation of the divine law which determines what acts are to be counted excesses and what not, and the key of coercion which determines what means may be employed to restrain excesses and to what extent—we pass to the subject of disciplinary procedure. Disciplinary procedure may be defined to be the method of applying the two keys, so as at once to safeguard the sanctity of the Church, to bring back those who have strayed from the path of holiness, and to prevent injustice being done where there is only the appearance of excess but the existence of it is denied. It involves inquiry into three things: (1) into spiritual courts, their jurisdiction past and present, and their constituent elements; (2) into the several modes of procedure adopted in them for the enforcement of discipline; and (3) into the manner of proceeding in judgment to ascertain disputed facts, including the judge's office in giving sentence, and the execution of sentences unless arrested by appeal.

2. In the administration of discipline in the first days of the Church, the decision of all matters affecting the position of its members was taken solemnly, *i.e.*, with the concurrence of all (1), or, as it was afterwards said, *in medio;* the bishop was

(1). Acts xv. 12: Πᾶν τὸ πλῆθος kept silence whilst the case was presented by St. Peter, St. Barnabas, and St. Paul. Then St. James gave his decision, which (ver. 22) commended itself to the apostles and presbyters, together with the whole Church. See also 1 Cor. v., and *Dicipline Generally*, note 61. Cyprian Ep. 13 (Oxf. 19): This is suitable to modesty and discipline, that the chief officers, meeting with the clergy in presence of the people, . . . may order all things with the righteousness of a common consultation. *Id.* Ep. 27 (Oxf. 34), 3: Let him be expelled from

naturally the president and spokesman, the presbyters aided him with advice, and the people were associated in the rulings of their elders. Matters of less importance were dealt with by the bishop and presbyters without the presence of the people (2), or as it was afterwards said, *in consistory*. And again, matters of small moment, or which only involved the application of principles already laid down, were decided by the bishop alone, or, as it was afterwards said, *in audience*.

### Origin of Courts Christian.

3. A spiritual court or court Christian may be defined to be any regularly constituted body of persons in the Church which hears and decides disciplinary matters of spiritual or ecclesiastical cognisance, either extra-judicially or judicially. From what has just been said it thus appears that the earliest spiritual courts were extra-judicial, and consisted either (1) of the whole body of the faithful, when they were called *synods, councils*, or, in later times, *visitation-courts;* or (2) of the bishop and his clergy, or the metropolitan and his clergy, *i.e.*, presbyters and deacons, when they were called *consistories* or *consistorial*

our communion, and plead the cause of his rashness before all of us. Ep. 39 (Oxf. 43), 7; Ep. 51 (Oxf. 55), 5. Ambros. Ep. 5 blames Syagrius, Bishop of Verona, for deciding upon the treatment of an accused person without the advice of any of the brethren. Ayliffe 259.

(2). Tertullian Apol. 39: [In the Church] are exhortations made, rebukes and censures administered. For with great gravity is the work of judging done as before trustworthy (certos) persons deputed from the face of God. Firmilian ad Cyprian Ep. 74 (Oxf. 75), 4, A.D. 256: Year by year we, the elders and prelates assemble to arrange those matters which are committed to our care. Apost. Const. II. 45–53, names Monday as the bishop's judicial day, when he sits, surrounded by presbyters and deacons, to hear the contending parties [*i.e.*, civil matters], and also complaints of unchristian conduct [*i.e.*, criminal matters]. First of all the other clergy attempt to reconcile the parties, and if this fails, the matter comes before the bishop. Concil. Elib. A.D. 305, Can. 74, 75, decrees that he who fails to prove his accusation convento clero (*al.* conventui clericorum) shall be suspended for five years, and he who fails to prove, and cannot prove, a charge against a presbyter or deacon, shall be denied the viaticum.

*courts* (3); or (3) of the bishop or metropolitan alone, when they were called *audiences* or *domestic courts.*

4. The procedure before all these tribunals appears at first to have been extra-judicial and summary. There was no judge in a technical sense, but the whole body present decided the matter, the members generally having a consultative, the members of the apostolic college a definitive voice (4). There were no technical forms of procedure to be gone through, but the action was like that now followed in a visitation court, or in the chapter of a monastic body. Offences against the rule of holiness were either known by the party's confession, by presentment, or by public notoriety (5); and what the synod, consistory, or audience did, was to determine how they should be dealt with. In so doing, it had (1) to interpret and decide what the Christian law was in each case as it arose, and (2) to determine how it should be applied under the particular circumstances disclosed.

5. The case became altered when the Christian law had been already determined by councils of the Church, and there was either a dispute as to the facts alleged, or differences arose between Christians in their relations to one another, as was early the case in the Corinthian Church (6). In these cases—

(3). Law's Forms, p. 2.

(4). See note 1, and Cardinal de la Luzerne, quoted in Ecclesiastical Courts Commission, vol. II. 228.

(5). 2 Cor. x. 6; 2 Tim. iv. 15; 2 Thess. iii. 14; Concil. Nic. A.D. 325, Can. 5; Concil. Carthag. A.D. 347, Can. 10, in Labbé II. 590; Concil. Constant. A.D. 382, Can. 6; Stat. Eccl. Ant. A.D. 505, Can. 23; Concil. Agath. A.D. 506, Can. 32; Concil. Aurel. III. A.D. 538, Can. 32; Stephen V. A.D. 887, ap. Gratian Caus. II. Qu. I. c. 17: In a manifest and known cause witnesses are not wanted, as St. Ambrose, commenting on the Epistle to the Corinthians, thus gives the Apostle's meaning respecting fornication: A judge may not condemn without an accuser, because our Lord, although he knew that Judas was a thief, did not reject him because no one accused him. . . . The Apostle, however, deemed that [the incestuous Corinthian] should be expelled. For all knew his crime, and he publicly had his mother-in-law to wife. Innocent. I. *Ibid.* Caus. XXXII. Qu. V. c. 23; Lynd. 323, 349.

(6). 1 Cor. VI. 1.

and they soon became the majority—there was no call for interpretation, but only for ascertaining the facts, and giving a decision upon them according to right. In accordance with the apostle's teaching, disputes between Christians are forbidden to be carried before extraneous tribunals, and are directed to be settled by those deputed by the Church (7). To do justice in such cases, it becomes necessary to have some kind of discussion in judgment (8), and some settled form of judicial procedure (9). Hence, side by side with the original extra-judicial

(7). Joseph. Ant. XIV. 10, 17 ; XVI. 6, states that Jews were accustomed to decide their disputes by arbitrators. 1 Cor. VI. 1 directs Christians to do the same. Augustin in Ps. CXVIII. Serm. 24 : The wicked oppress the weak, and these are compelled to bring their causes before us, and we dare not say to them, Man, who made me a judge and divider among you? For the apostle constituted ecclesiastical judges for such matters, forbidding Christians to agitate their quarrels before temporal courts (in foro). *Id.* de Oper. Monach. c. 29. Apost. Const. II. 45 : If, by any misadventure or temptation, a dispute arises with any one, let him endeavour that it may be composed, though thereby he is obliged to lose somewhat ; and let it not come before a heathen tribunal. *Ibid.* c. 46 : Let not the heathen know of your differences. Stat. Eccl. Ant. A.D. 505, Can. 87 ap. Labbé II. 1444 : Let a Catholic who carries his cause, whether just or unjust, before the court of a judge of another faith, be excommunicated. See *Duties of Order*, note 12 ; *Excesses*, note 284.

(8). Isidor. Etym. XVIII. 15 in Decret. Lib. I. Tit. XL. c. 10, says : It is in judgment when it is discussed ; and elsewhere : To discuss according to law is to judge justly. He further says (what Devoti Lib. III. Tit. I. § 18 repeats) that two disputants, a dispute, and a judge are necessary to constitute a judicial court (*judicium*), and that it is not the less a court because the procedure is summary. Innocent III. in Decret. Lib. I. Tit. IV. c. 3, A.D. 1199, reprobates the practice then prevalent at Poitou, of all the members of the Church, learned and unlearned alike, deciding ecclesiastical matters in court. Law's Forms defines a court as "the jurisdiction of the ordinary in taking cognisance of clerical matters, whether contentious or voluntary," but this definition applies only to a judicial court.

(9). St. Paul's direction to St. Timothy (1 Tim. v. 19) not to receive an accusation against a presbyter, except at the mouth of two witnesses, is a direction concerning procedure. Cyprian ad Cornelium, 48, 3 : The day of investigation was coming on, on which his cause was to be dealt with before us. Ep. 54, 10 states that he had judicially condemned Privatus and others. According to Socrates I. 9, the Nicene fathers, before condemning

tribunals, which gave sentence synodically (*in medio*) ([10]), or in audience ([11]), when the facts were known or the interpretation of the law was involved, there grew up judicial tribunals to decide disputed facts, or to apply the law to particular cases in judgment (*in judicio*) ([12]).

6. The constitution of these judicial courts appears to have

Arius, summoned him to appear, then heard him and his accusers, and ultimately condemned him. Apost. Can. 74: If a bishop be accused of any crime, it is necessary that he be cited by the bishops. . . . If, when cited, he does not obey, let him be cited a second time by two bishops. Nestorius was thrice cited to appear at Ephesus, because, according to the Relatio Concilii ad Coelestinum in Labbé III. 1190, "it is unseemly to omit any of those things which pertain to ecclesiastical order." Even the synod of the Oak, according to Socrates VI. 15, summoned Chrysostom four times to appear. Eutyches received a threefold citation from the Council of Constantinople, and Dioscoros the like from the Council of Chalcedon, according to Labbé IV. 1778 and 1811. In his dialogue with the Emperor Constantius, in Theodoret II. 16, Pope Liberius says: No man ought to be condemned without being examined.

(10). Innocent I. A.D. 404, ap. Gratian I. Dist. LXXXI. c. 6; Syn. Rom. A.D. 502, Can. 1; *Ibid.* I. Dist. XCVI. c. 1: Let it be brought before all (Deferatur in medium). Codex Eccles. Afric. I. 8: Veniat commonitorium in medium. Lynd. 323.

(11). Valentinian III. in Cod. Theodos. I. 47, A.D. 425: Clergy we reserve for the bishop's audience. Honorius III. in Decret. Lib. II. Tit. 1. c. 19, says that a petition was addressed to his audience, whereupon he committed the investigation of the facts to the Bishop of Paris and his fellow-judges. Innocent III. states the same, *Ibid.* Lib. III. Tit. XXX. c. 31, and Lib. I. Tit. XLI. c. 2. Van Espen Pars. I. Tit. 1. c. 3, contends that the term audience only applies to arbitration courts. Devoti Lib. III. Tit. I. § 22, shows that audience is applied to public determination of the outer forum.

(12). Devoti Lib. III. Tit. II. § 3: *Imperium* does not always go together with power of judging. For there are judges who have only power of cognisance, but have no jurisdiction, and these only investigate and decide a disputed matter, but have no *imperium* to pronounce and execute a sentence, and they are said not *jus dicere*, but *judicare*. Ayliffe 23, 350: A controversy may happen either in or out of judgment. It may be judicial or extra-judicial. For a controversy may be *sine lite*. Stat. Eccl. Ant. A.D. 505, ap. Gratian Caus. XV. Qu. VII. c. 6: Let the bishop hear the cause of no one without the presence of his clergy. Chrysost. de Sacerd. III. 17: The part which a bishop has to play in judging begets infinite dislikes and infinite offence. Eccles. Courts Commission, 1883, vol. ii. 264.

varied considerably. In criminal cases they consisted of certain of the elder presbyters (13) or ancients (14), the number being more or less numerous according to the nature of the charge and the position of the offender (15); but in civil cases usually a single "wise man" was deputed by the bishop to investigate the facts and report to him upon the dispute, called in later times an auditor (16). As was natural, the procedure followed was that customary in the empire in arbitration cases, with this difference, that the referees of the Church, as being the kingdom of righteousness upon earth, were more anxious than secular arbitrators to act justly (17), and

(13). Apost. Const. II. 47: Those that have the controversy shall stand severally in the midst of the court. And when you [presbyters] have heard them, give your votes boldly, endeavouring to reconcile them before the bishop's sentence, that sentence against an offender may not go abroad into the world. Gregory ap. Gratian Caus. XV. Qu. VII. c. 2 calls them seniores, *i.e.*, presbyters. Isidore *Ibid.* 1 Dist. XXI. c. 1 calls them presbyters.

(14). Concil. London A.D. 1075, Can. 1, calls them ancients, meaning thereby clerical canonists. Concil. Lat. IV. A.D. 1215, Can. 8 in Decret. Lib. V. Tit. 1. c. 24 requires that whenever a prelate of the Church is defamed the truth of the matter should be inquired into before the elders of the Church (*coram ecclesiæ senioribus*).

(15). Socrates I. 6 relates that Bishop Alexander of Alexandria convened a council of many prelates to condemn Arius, but that was a case of heresy. According to authorities quoted by Gratian Caus. XV. Qu. III., in Africa twelve bishops were required for the trial of a bishop, six for that of a presbyter, three for a deacon; but according to Concil. Matiscon. II. A.D. 585, Can. 6 and 7 in Labbe VI. 676, three were sufficient, except in the most difficult cases, in the Western Church for a bishop.

(16). In 1 Cor. VI. 4 St. Paul directs those who are thought nothing of in the Church to be appointed judges if there is not a single wise man. Socrates VII. 37 relates that Silvanus, Bishop of Troas, "perceiving that ecclesiastics made a gain of the contentions of those engaged in lawsuits, would never nominate any of the clergy as judges, but causing the documents of the litigants to be delivered to himself, committed to some pious layman the adjudication of the case." Concil. Carthag. V. A.D. 401, ap. Gratian Caus. II. Qu. VI. c. 38, calls such a judge *præses* or *cognitor*. Innocent III. to Archbishop of Canterbury in Decret. Lib. I. Tit. XXIX. c. 27, § 3, calls him *auditor*.

(17). Apost. Const. II. 37: It is the duty of the bishop to judge righteously. *Ibid.* II. 42, 44, Apost. Const. II. 47, calls on the presbyters who are told off

in criminal cases to condemn no one without the clearest proof (18).

7. If the decision of the referees was not acquiesced in, the only instrument by which the Church was able to enforce a sentence was by excommunication. Roman law was, however, itself favourable to arbitrations, and to give them effect prescribed a penal clause to be inserted in the agreement referring the matter to arbitration (19). On the public recognition of the Church by the empire in the fourth century, the law went further. First it allowed clergy, in accordance with the Church's rule (20), to be bound in all cases by the sentence of a spiritual tribunal, and in cases of discipline made them amenable to the rulings of spiritual courts only (21). Next it

to determine the merits of a case to give their decision fearlessly and straightforwardly, knowing that the bishop who will be called upon to decide, if they have not decided rightly, "has in the judgment-seat a co-decider and co-investigator of the right, the Christ of God." The synod which condemned Paul of Samosata in 269 A.D., in Euseb. VII. 30, charged him with "exacting and extorting money from the brethren, depressing the injured, and promising to give help for a reward;" with preparing for himself a "βῆμα and lofty throne," and having a σήκρητον, or, in other words, for taking upon himself, after the fashion of worldly judges, to decide cases on his own motion, without the concurrence of the Church, and selling justice.

(18). See *Discipline Generally*, note 52; *Acts in Judgment*, § 35.

(19). Dig. Lib. IV. Tit. 8.

(20). Concil. Carthag. III. A.D. 397, c. 9: If any bishop, presbyter, deacon, or one of the lower clergy, when a charge is made against him, or a civil dispute arises, shall leave the ecclesiastical *forum* and attempt to clear himself before secular (publici) courts, even though he win his case let him forfeit his place, *i.e.*, if it be a criminal procedure; but if it be only a civil matter, let him forfeit what he has won if he wishes to retain his place. Concil. Chalcedon A.D. 451, Can. 9. See *Duties of Order*, note 12; *Excesses*, note 284.

(21). Lex Constantii in Cod. Theodos. XVI. XI. 12, A.D. 355: In exercise of our clemency we forbid bishops being accused in [civil] courts. If any one has a complaint against [a bishop], it is seemly that it be investigated before other bishops. Gratian *Ibid.* I. 23, A.D. 376: The rule which obtains in civil causes ought also to obtain in ecclesiastial matters, viz., that if of certain disagreements and light shortcomings any have reference to the observance of religion, they ought to be heard in their proper place, and

gave legal effect to the bishop's decisions on ecclesiastical matters (22); and ultimately it allowed bishops to decide civil matters definitively, provided they had been chosen as judges by the parties (23). The jurisdiction of spiritual courts, it will be thus seen, extended in the Roman Empire to two classes of subjects: (1) to causes concerning the government of souls and matters of religion by right (24), and (2) to civil causes by sufferance with consent of the parties.

by the synods of their dioceses, excepting such as criminal action requires to be heard by ordinary or extraordinary courts or other higher powers. Honorius, *Ibid.* I. 41, A.D. 412: Clergy may not be accused except before their bishops. Valentinian III. *Ibid.* I. 47, A.D. 425: Clergy we reserve to the bishop's audience; for it is not according to piety that ministers of the divine gift should be exposed to the caprice of temporal powers. See note 67.

(22). In Euseb. Vita Const. IV. 24 Constantine says to the bishops: Ye indeed are overseers of those things which are within the Church; I, of those which are without it. Honorius in Cod. Theodos. XVI. XI. 1, A.D. 399: Whenever it is a question of religion it is fitting that bishops should judge. Other causes which belong to commissioners (cognitores), or to the cognisance of public judges, must be determined according to law. Justin Nov. 28: If it be an ecclesiastical offence requiring correction and ecclesiastical punishment, let the bishop beloved of God give sentence thereon.

(23). Euseb. de Vita Const. IV. 27; Sozomen I. 9 says that Constantine allowed litigants to apply to the bishop's judgment if they declined the secular tribunals, and ordered that the bishop's decision should have the same force as if it had been given by the emperor himself. Cod. Justin. I. IV. 8, A.D. 408: Let the bishop's judgment stand (*ratum sit*) for all who have chosen to be heard by bishops; and we command that the same respect be shown to their decision as must be shown to your authority, from which no appeal lies. Let the execution of it also be committed to be carried out (definitioni) by the officers of the judges, so that the bishop's ruling may not be in vain. Augustin in Ps. XXV. § 13, A.D. 415: So much have the princes of this world committed to the Church, that whatever has been there ruled cannot be rescinded. Codex. Eccl. Afric. Can. 104, says that if a bishop applies to the emperor to have his court recognised, no objection can be taken. See note 67.

(24). In Athanas. Hist. of Arians, c. 44; Hosius of Cordova says to Constantine: Do not intrude into ecclesiastical matters. To you God has intrusted the kingdom, to us is committed the Church. See note 157. Valentinian I. refused to judge about bishops, and Ambrose quoted his

8. In this country prior to the Norman Conquest the bishop or archbishop was the sole judge of clergy for all crimes (25), and he had also cognisance of certain offences against the rights of the Church and ecclesiastical order (26); but as he usually sat with the sheriff in the Hundred Court, "to put in use both God's law and the world's law" (27), his spiritual and secular jurisdictions were often exercised simultaneously. Following the example of the Emperor Charles, who in 803 A.D. established courts Christian in the Western Empire, William the Conqueror terminated this mixed administration in 1085 A.D., by forbidding causes which concerned the government of souls to be brought before secular courts, and directing that instead they should be heard and decided (1) in ecclesiastical courts, or courts Christian; (2) at fixed places; and (3) according to the episcopal laws (28).

decision to his son, Valentinian II., telling him that it was not for him to judge between bishops. Eccles. Courts Com. 1883, vol. ii. 257.

(25). Wihtraed's Doom 6, A.D. 696, in H. and S. III. 234: If a priest allow of illicit intercourse . . . or be drunk . . . let him abstain from his ministry until the doom of the bishop. Leg. Sax. 83. For a civil case, Leg. Sax. 51; Alfred and Guthrum's Law 3, A.D. 878: If a man in orders commit a capital crime, let him be reserved to the bishop's doom.

(26). Leg. Sax. 12, 34, 53, 142.

(27). Athelstan's Law 9, A.D. 925; Edgar's Law 7, A.D. 958; Ecclesiastical Courts Commission Report, 1883, p. xvii.

(28). Lingard vol. i. ch. viii. p. 247. William following Edward's Law 3, A.D. 1064 ruled: I command by royal authority that no bishop nor archdeacon do hereafter hold plea in the Hundred according to the laws episcopal, nor bring those causes before the secular judicature which concern the government of souls. But whoever is impleaded by the laws episcopal for any causes or crime, let him come to the place which the bishop shall choose and name for this purpose, and there make answer concerning his cause and crime; and that not according to the Hundred [sc. the common law], but according to the canons and the laws episcopal, and let him do right to God and the bishop. But if any one refuse to come to the bishop's court, let him be summoned three several times; and if by this means he be not brought to obedience, let application be made to the power and court of the king or sheriff; and he who upon summons refuses to come to the episcopal court shall make satisfaction for every summons according to the laws episcopal. This also I absolutely forbid, that any sheriff, reeve, minister of the king, do any ways concern himself with the laws

9. This change necessitated the appointment of regular officers to preside over the newly created courts at fixed centres, and seems to have been the origin not only of the archdeacons' ordinary jurisdiction, but also of the multiplication of archdeaconries (29). At the same time the great development of the episcopal laws, henceforth called Canon law, rendered special knowledge necessary both in the archdeacons' courts and in the bishop's own court, which acted as a court of appeal from their decisions. Hence permanent officials were appointed to preside over both, conversant with the law of evidence and learned in the Canon law, the higher ones being invested with an ordinary jurisdiction (30) not only to hear and determine disputed facts, but also to give sentence upon the facts thus ascertained according to the existing law (31). The courts thus brought into existence were regarded as synods acting by representation or permanent delegation, and whatever was done in them was indiscriminately spoken of as being done in court or done in synod (32).

which belong to the bishop, or bring another man to judgment [by ordeal], anywhere but in the bishop's court. And let judgment be nowhere undergone but in the bishop's see or in that place which he appoints for this purpose." They are called ecclesiastical courts by the Second Statute of Westminster 13 Ed. I. St. IV. c. 1, A.D. 1285; 25 Ed. III. St. III. c. 8; 1 Ric. II. c. 8 and 13; 1 Hen. VII. c. 4; 23 Hen. VIII. c. 9; 27 Hen. VIII. c. 20; 2 and 3 Ed. VI. c. 13–15; 4 Jac. I. c. 5; Lynd. 97.

(29). Ecclesiastical Courts Commission Report, 1883, p. xviii.

(30). Thus according to Oughton, quoted in Eccles. Courts Commis. vol. II. p. 82, a sentence of suspension by the Court of Arches was formerly fixed by the judge, but read by a presbyter deputed by the archbishop.

(31). Sidonius Apollin. Lib. II. Ep. 12, and Synesius Epist. 105, require a bishop to be learned in the laws, that he may decide in accordance with the laws. See *Privileges of Order*, note 197. When bishops were not themselves thus conversant with the canons, a vicar-general, official principal, or chancellor, was required to be associated with them, who took their place *in judicio*. Ecclesiastical Courts Commission 1883, p. 26, states that within half a century from the Conquest the official was an ordinary.

(32). Pseudo-Isidor. ap. Gratian Caus. v. Qu. II. c. 1; Vocatio in Synodum canonica. Concil. Chelsea A.D. 816, Can. 6: If any one be summoned to synod by his plaintiffs. Concil. Tribur. A.D. 895, *Ibid.* Caus. II. Qu. v. c. 1, directs an accused person to clear himself in synod. Concil.

10. Under the Conqueror's successors spiritual courts rose in importance, and far from having been abolished by Henry I., as has been sometimes said (33), they claimed to exercise in this country the same twofold jurisdiction which, by favour of the Roman emperors, they had been allowed to exercise in the empire, and in addition the same rights over the clergy which they exercised in the Papal States, where the pope had sovereign authority, viz., that the clergy should be tried and punished in them for all crimes as well against the state as against the Church (34). The latter claim was resisted by the Norman kings, but the formal rejection of it contemplated by the Constitutions of Clarendon in 1164 A.D. (35), was for a time frustrated by the murder of Thomas à Becket. Henry III. nevertheless succeeded by means of the Writ of Prohibition where Henry II. had failed, and the boundaries of the two judicatures were gradually determined. Except in so far as these boundaries have been altered by subsequent legislation (36),

Lat. IV. A.D. 1215, Can. 6, in Decret. Lib. v. Tit. l. c. 25, directs a metropolitan to hold a provincial council and a bishop an episcopal council [or visitation court] for the correction of excesses.

(33). Lingard vol. ii. c. 3, p. 63, shows that the statement is erroneous.

(34). Bright, No. 5417, in Ecclesiastical Courts Commission, vol. ii. p. 256. The justification of this claim, at least in part, may be found in the fact that there existed in Saxon times many *frithburh* jurisdictions (*i.e.*, jurisdictions for guaranteeing the king's peace) independently of the Hundred. Law 14 of the so-called Laws of Edward, A.D. 1064, declares that the knights and servants of archbishops, bishops, earls, barons, and all who have *sac* [or the hearing of causes], *soc* [jurisdiction], *toll*, *teem*, and *infangthef*, as also their esquires, shall be under the frithburh of their lords, who "if they incur forfeiture, shall oblige them to what is right in their own courts." No doubt this would include clergy living within such jurisdictions. See Cnut's Law 13. Becket claimed to extend it to *all* clergy. It was the aim of Henry II. to break down these extra-Hundredal jurisdictions. Hence, as Stubbs Const. Hist. § 129, vol. i. p. 400, observes: It was no small triumph when Henry II. forced them to admit his itinerant justices to exercise jurisdiction in them. See note 71.

(35). A similar enactment in regard to tithe disputes is contained in the Second Statute of Westminster, 13 Ed. I. St. l. c. 5, sec. 4, A.D. 1285, confirmed by 2 and 3 Ed. VI. c. 13, A.D. 1548.

(36). The Act 53 Geo. III. c. 127 forbids ecclesiastical courts to pass sen-

spiritual courts in the form in which they existed under the feudal hierarchy of the 13th century are still allowed to decide all matters as to which they can claim jurisdiction by custom (37). In the Isle of Man, which was under sovereigns of its own, the restraining power was much less, and spiritual courts have in consequence a much more extensive jurisdiction there than here over mixed and temporal matters (38).

11. The spiritual courts which exist in this country are accordingly of two kinds, (1) extra-judicial and (2) judicial. An extra-judicial court is a court in which a matter or controversy is dealt with by the Church or by its representative *in medio*, such as a visitation court, a consistory, and a prelate's own court of audience; but to constitute a court of audience two canonical witnesses, or one notary or public person at

tences of excommunication, save when such sentences are pronounced as spiritual censures for offences of ecclesiastical cognisance only, and in that case forbids excommunication from being followed by any civil penalty or incapacity beyond a liability to imprisonment for a term not exceeding six months, this imprisonment to be enforced only through the civil authority by means of a writ called *Significavit*. Statute 20 and 21 Vict. c. 85, passed in 1857, withdrew Divorce and Matrimonial causes from the cognisance of spiritual courts; and the statute 20 and 21 Vict. c. 77, amended by 21 and 22 Vict. c. 95, abolished all the powers hitherto exercised by them in the granting Probates of Wills and Letters of Administration. The statute 6 and 7 Will. IV. c. 71 took away from spiritual courts jurisdiction in tithe cases, and gave to tithe-owners a summary remedy by distraint, for which 54 Vict. c. 8, A.D. 1891, has substituted a County Court action.

(37). Their jurisdiction is preserved by sec. 7 of 26 Hen. VIII. c. 3. Coke 4 Inst. p. 321, quotes 25 Hen. VIII. c. 21 as allowing that "the spirituality is also at this hour sufficient and meet of itself without the intermeddling of any *exterior* person or persons to declare and determine of such doubts and to administer all such offices and duties as to their rooms spiritual doth appertain." 13 Car. II. c. 12, sec. 1, A.D. 1661, allows them jurisdiction in all matters allowed to them by custom.

(38). See Stephens' Eccles. Stat. II. 1830. In Eccles. Courts Commission 1883, vol. II. p. 322 an account is given of the subject matter of jurisdiction administered by (1) the Chapter-Court (=Visitation Court or Synod), (2) the Vicar-General's Court, a Court of Summary Jurisdiction (=the Bishop's Audience, and (3) the Consistory, the principal ecclesiastical court, in which written pleadings alone are used.

least, must be present besides the prelate and the parties concerned (39). Every executive act which is of a solemn nature, and requires the ordinary's office as the representative of the synod, must be done in a court of this kind, such as the granting institution to a benefice (40), accepting a resignation (41), a metropolitan's confirmation of a bishop, the constituting of a new parish. Disciplinary causes, when either the facts are notorious (42) or are voluntarily admitted, come properly before, and are terminated in, such a court.

(39). Gregory ap. Gratian Caus. XV. Qu. VII. c. 2, calls them elders; also 1 Dist. XXII. c. 1; XXI. c. 1, § 12; Dist. LXIV. c. 6; Caus. XII. Qu. 1. c. 1; Elfric's Can. 15, A.D. 957; Concil. Winton. A.D. 1071, Can. 1; Const. 48 Langton, A.D. 1222. Lynd. 79 call them testes synodales. Their presence is required by Concil. Lat. IV. A.D. 1215, in Decret. Lib. II. Tit. XIX. c. 11, repeated by Const. 29 Otho, A.D. 1237. Also Can. 123 of 1603 A.D.

(40). Alexander III. to the English bishops in Decret. Lib. III. Tit. XXXVIII. c. 21, states that some presume to take possession of ecclesiastical benefices without the intervention of the bishop's audience-court. Co. 2 Inst. 651 states that in admitting to a benefice the ordinary acts as a judge and not as a minister. Lynd. 111. Conf. sec. 7 of 26 Hen. VIII. c. 3. Lynd. 219: Institutio præsentati fit cum causæ cognitione.

(41). In Fytche's Case 1783, in Cuningham's Law of Simony, p. 79, the judges declined to say whether the acceptance of a resignation is a judicial act, *i.e.*, in the sense in which judicial is understood by secular courts. In *Hesketh* v. *Gray*, *Ibid.* p. 25, Ryder, C.J., declared that "the ordinary is a judicial officer, and is entrusted with a judicial power to accept or refuse resignation as he thinks proper." Judicial is used in these cases in the sense of discretionary, such discretion being usually exercised extra-judicially, when there is no dispute as to the fact of the resignation being made and the clerk wishing to resign. Lynd. 107 calls acceptance judicis officium. There are many cases of appeals from his discretion in Decret. Lib. I. Tit. IX. and Tit. XL. See also Lord Denman in the Dean of York's case, 1 Ad. and El. N. S. p. 11. Law's Forms 78.

(42). Augustin in Decret Lib. V. Tit. 1. c. 10: An evil deed done in the sight of all requires not the clamour of an accuser. Lucius III. *Ibid.* Lib. III. Tit. II. c. 7: Notorious is that for which a presbyter may be condemned. Innocent III. to Bishop of Exeter, *Ibid.* c. 8: If their crime is so public that it has become notorious, in that case neither a witness nor an accuser is necessary, . . . but if the publicity is only by report, and not done in the sight of all, reports are not sufficient to condemn. According to Sext. Lib. II. Tit. XII. c. 2, a conviction in a court of law consti-

12. A judicial court consists either of a synodal committee ([43]) or of a single judge learned in the law ([44]), who acts as the judicial adviser of the synod or its president ([45]); and it is the duty of such a court to inquire judicially into the facts, to indicate the sentence due upon them according to the canons, and if authorised by law or by custom so to do, to pronounce it. Such a judge may represent the bishop's consistory, when he is called the bishop's official or chancellor of the diocese; or the archdeacon's rural consistory, when he is called the archdeacon's official or dean ([46]); or the consistory of the province or archbishop, when he is called the provincial dean or the metropolitan's official principal ([47]).

13. The official of a judicial court may entertain a suit judicially without the presiding prelate being present, except it be a charge of heresy ([48]), because on all questions of procedure

tutes notoriety, and may now be acted upon in this country by 55 and 56 Vict. c. 32. Lynd 323 defines notorious as proof publicly concluded established judicially, or else based on a fact judicially discussed.

(43). Gregory IX. in Decret Lib. II. Tit. v. c. 1, mentions them in the plural as *judices*. See note 168.

(44). 1 Cor. VI. 5 reproaches the Corinthians *οὐκ ἔστιν ἐν ὑμῖν σοφὸς, οὐδὲ εἷς ὃς δυνήσεται διακρῖναι ἀνὰ μέσον τοῦ ἀδελφοῦ αὐτοῦ*; Const. 2 Chichele, A.D. 1415, requires the judge to be a clerk. Lynd, 129. Yet 37 Hen. VIII. c. 17 permits him to be a layman, provided he is a doctor of law.

(45). See *The Diocese*. Conf. Const. 7 Stratford, A.D. 1342. Lynd. 80.

(46). Concil. Westminster, A.D. 1200, Can. 5: Let archdeacons and their deans presume not to exact anything of their presbyters or clerks. Rural deans were in some places the archdeacon's officials. Syn. Lugdun. A.D. 1245, in Sext. Lib. v. Tit. XI. c. 5, mentions the archdeacon's official.

(47). See *The Province*.

(48). It may be doubted whether a single bishop ever possessed the right of adjudicating upon heresy before the Fourth Lateran Council, A.D. 1215, in Decret. Lib. v. Tit. VII. c. 13, committed to the bishop cognisance of heresy. See note 15. Boniface VIII. in Sext. Lib. v. Tit. II. c. 18, authorised the civil power to punish heretics condemned by the bishop regardless of their appealing (*appellatione postposita*). Lynd. 296, quoted in Eccles. Courts Commission, Vol. II. 263, Qu. 7415: The cognisance of heresy is by law allowed to two judges only, viz., to the bishop of the place and to an inquisitor of heresy sent from the Apostolic See, as appears from Sext. Lib. v. Tit. II. c. 11, 17, 18, in which mention is made only of

and canon law, but not of theology, he represents the knowledge of the synod or consistory; but a prelate cannot hold an inquiry into disputed facts or execute his own extra-judicial rulings by process without his official (49), because, at least since the twelfth century, judicial procedure and execution are held to be matters requiring this official's special knowledge. The consistory or auditory of a synod, of its president, and of the judge who represents him and it, are in all cases deemed to be one and the same (50); and since each presides over a tribunal which is supplementary to the tribunals of the others, there can be no appeal from one to the other.

14. The judicial tribunals which in popular esteem monopolise the title of courts are thus seen to be only the handmaids to the extra-judicial tribunals or consistories which date from the earliest days of the Church; and since each represents a

diocesans and inquisitors sent from the Apostolic See. So it is also said, *Ibid.* c. 20; Clem. Lib. v. Tit. III. c. 1, where it is clear that such jurisdiction or cognisance belongs to the chapter during the vacancy of the see. For no text can be found which gives this cognisance to one inferior to a bishop or to his official or vicar-general; for the case of heresy is one of the most important cases which belongs to bishops only. The Statute 2 Hen. IV. c. 15, A.D. 1400, *de Haeretico comburendo*, and 2 Hen. V. c. 7, also gave authority to bishops and their commissaries. Yet Const. 16 Chichele, A.D. 1416, reserved to the archbishop in Convocation to pronounce what was heresy. In 1701 Convocation condemned Whiston's Book, and eight judges against four ruled that Convocation had jurisdiction in such cases (Phill. 1934), but according to Phill. 1960 the contrary opinion is now generally held. See Eccles. Courts Com. 1883, Vol. II. 49.

(49). Ayliffe 161: Or as it is often said, "without his court," *i.e.*, the official of his judicial court. Ecclesiastical Courts Commission, 1883, p. XXXVIII. reports that: "It has been affirmed in courts of law that a commission of chancellor or vicar-general cannot be regarded as excluding the archbishop or bishop from sitting in his own court," but they can only say "instances may be quoted in which the power has been exercised *since the Reformation*." And apparently the Statute 3 and 4 Vict. c. 86, first introduced the practice of a bishop sitting as judge to investigate the facts. See Dr. Dean's opinion, *Ibid.* Vol. II. p. 312 and 356, Qu. 7198. If the bishop were to sit, how could he award himself costs? See note 169: The bishop is an extra-judicial judge, his official a judicial judge.

(50). Lynd. 80.

particular department in the exercise of discipline, controversies which are introduced extra-judicially in audience or in synod must be appealed against in audience or in synod; and those introduced in judgment must be appealed against in judgment. Still in whatever way a controversy may be begun, when it reaches the highest tribunal of all, judicial acts are at an end, and it must be dealt with in synod or in audience (51).

JURISDICTION OF SPIRITUAL COURTS IN THIS COUNTRY.

15. When courts Christian were first established in this country, no very clear line was for some time drawn between matters of spiritual and matters of lay cognisance. The government of souls is a wide subject, and might be and was construed as placing the determination of all *matters* concerning spiritual persons and of all disputes touching ecclesiastical property in the hands of the Church courts (52). Henry II., by the assize of *Darrein presentment*, reclaimed for the secular power the determination of right of advowson, and by the Constitutions of Clarendon, in 1164 A.D., attempted still further to delimit the boundaries of the spiritual and temporal authorities (53). Fifty years later the Great Charter secured to the

(51). Law's Forms 60, note.

(52). Ecclesiastical Courts Commission Report, 1883, p. XXII.

(53). These Constitutions provide: (1) If controversy arise concerning the patronage of Churches, . . . let it be tried and determined in the king's court. (2) Churches belonging to the fee of our lord the king cannot be appropriated without his grant. (3) Clergy accused of any matter upon summons from the king's judge shall come and make answer there as well as to the ecclesiastical court, and shall be dealt with according to the verdict in the ecclesiastical court. (4) It is not lawful for archbishops, bishops, and parsons of the kingdom to depart the kingdom without the king's license. (5) Excommunicates ought not to give security for all time, or to make oath before they are absolved, but only to give security and pledge for standing to the judgment of the Church. (6) Laymen ought not to be accused before the bishop or archdeacon but by trustworthy lawful men, and in default of an accuser the sheriff may empanel a jury at the bishop's request to try the issue of fact. (7) That none who hold of the king *in capite*, nor the officers upon his demesnes, be excommunicate . . . till application has been made to our lord the king

Church all its rights and liberties (54), the nature of which can be best gathered from the sentences of curse pronounced at the

. . . or his justice. (8) If appeals arise, they ought to proceed from the archdeacon to the bishop, from the bishop to the archbishop, and lastly to the king, . . . so that it go no further without the king's consent. (9) . . . It shall be determined by the award of 12 lawful men before the king's justice whether the estate be in free alms or in lay fee. If the finding be that it is in free-alms, the plea shall be in the ecclesiastical court; but if in lay fee, then, unless both claim their tenure under the same bishop or baron, the plea shall be in the king's court. (10) If one that is cited for any crime for which he ought to make answer to the archdeacon or bishop will not make satisfaction upon three summonses, they may lawfully put him under interdict, but not excommunicate him till application hath been made to the king's chief officer of the vill. (11) Archbishops and bishops and all the parsons of the kingdom who hold of the king *in capite* are to look on their estates as baronies. . . . (12) When an archbishopric, bishopric, abbacy, or priory is vacant, it ought to be in the king's hands, and the vacancy filled up by the election of the chief parsons upon viewing the king's mandate. (13) If any great men of the kingdom do violently oppose the archbishop, bishop, or archdeacon in doing justice to himself in things that properly belong to him, the king ought to vindicate him. . . . (14) The chattels of those guilty of capital crimes are not to be kept in the Church and churchyard against the king's justices. . . . (15) Pleas of debt are in the king's cognisance, whether upon solemn promise or not. . . . (16) The sons of villagers ought not to be ordained without the consent of the lord on whose land they are admitted to have been born. Stubbs in Ecclesiastical Courts Commission, A.D. 1883, p. xxx.: The absolution of Henry II. from the guilt of Becket's murder was granted on the condition of his renouncing the evil customs embodied in the Constitutions of Clarendon; and Henry II. solemnly revoked them in 1173. *Ibid.* Vol. II. 113.

(54). Magna Carta, A.D. 1215: That the English Church shall be free, and enjoy all her rights in their integrity and her liberties untouched. . . . No clerk shall be amerced for his lay-tenement except after the manner of the other persons aforesaid, and not according to the value of his ecclesiastical benefice. . . . All barons, founders of abbeys by charters of English kings and ancient tenure, shall have the custody of the same during vacancy. . . . Wherefore we will and firmly charge that the English Church be free, and that all men in our kingdom have and hold all the aforesaid rights, liberties, and concessions. 14 Ed. III. St. 1. c. 1, A.D. 1340: That holy Church have her liberties in quietness, without interruption or disturbance. 50 Ed. III. c. 1, A.D. 1376, after the feudal sovereignty of the pope had been thrown off in 1366, repeats this; also 1 Ric. II. c. 1, A.D. 1377; 1 Hen. IV. c.

Synod of Oxford, in 1222 A.D., on those who violated them (55). These sentences received legal effect from an ordinance of Henry III., made in the year 1253 A.D. (56), and were promulgated repeatedly in later times by royal authority up to the time of Archbishop Chichele in 1434 A.D., as sentences already passed (57).

1, A.D. 1399; 4 Hen. IV. c. 3, A.D. 1402; 3 Hen. V. St. II. c. 1, A.D. 1415; 2 Hen. VI. c. 1, A.D. 1423.

(55). Const. 1 Langton, A.D. 1222: We excommunicate [1] those who maliciously deprive Churches of their rights and disturb their liberties . . . and all that violate sequestrations of vacant Churches; . . . [10] all that violate sanctuaries; [9] all that seize on the goods of clergy . . . unjustly, or any ways molest their persons; [2] all thieves, robbers, freebooters, incendiaries, sacrilegious and felonious persons. . . . [3] We excommunicate those who knowingly bear false witness, as also [4] advocates who maliciously lay objection to the consummation of marriages. [5] We excommunicate all who, for lucre, favour, ill-will, or any other cause, maliciously charge with crimes such men as have preserved their reputation; [6] and all those who upon the vacancy of a Church maliciously oppose the inquest concerning the right of patronage, [7] or refuse to execute the king's mandate against excommunicates. . . . Let this general excommunication be published by every parochial incumbent in his holy vestments, with bells tolling and candles lighted, before the whole congregation, in the mother-tongue, on Christmas, Easter, Pentecost, and All Hallows' Day.

(56). 38 Hen. III. A.D. 1253; Const. 1 Boniface, A.D. 1261, in Lynd. 315. According to Stubbs, in Ecclesiastical Courts Commission p. 31, Henry III., in 1246 and 1247, issued ordinances confining the ecclesiastical courts in matters of civil interest to the jurisdiction long established in their hands in testamentary and matrimonial causes. 14 Ed. III. St. I. c. 1, A.D. 1340: Qe seinte eglise eit ses franchises en quiete saunz empechement ou distourbance. 50 Ed. III. c. 1, A.D. 1376; 1 Ric. II. c. 1, A.D. 1377; 1 Hen. IV. c. 1, A.D. 1399; 2 Hen. VI. c. 1, A.D. 1423, are statutes confirming the liberties of the Church.

(57). Const. 36 Edmund, A.D. 1236; Const. 1 and 9 Boniface, A.D. 1261; Const. 3 Peckham, A.D. 1279, excommunicate [1] all who maliciously deprive Churches of their right, . . . who obtain letters from any lay-court to ecclesiastics in such cases as by the sacred canons belong to the ecclesiastical court; [2] all robbers, [3] bearers of false witness, [4] obstructors of marriage, [5] defamers of good men, [6] opposers of inquests of patronage; [7] all who refuse to execute the king's mandate as to excommunicates; [8] all who hinder settlement of disputes; [9] all who invade ecclesiastical property; [10] those who violate sanctuaries; and [11] who transgress the

16. As thus defined, the ancient jurisdiction of courts Christian in this country was always held not to include (1) cases involving life or limb, and (2) cases involving the right to a lay fee or to money. The law of the Church forbad ecclesiastics to meddle with pleas of blood (58); and the law of the land excepted from their cognisance cases of freehold (59), including right of advowson (60), debt, treason, and covenant (61). If doubt arose whether a case came within the jurisdiction of the spiritual court, the right of expounding William's mandate and the liberties conferred by the Great Charter was always

Great Charter. Peckham was obliged to withdraw the 1st, 7th, and 9th, and to order the removal of the Great Charter from the Church doors; but when Edward I. withdrew his opposition, the above sentences were revived in Const. 1 Peckham, A.D. 1281, and ordered to be published in every Church on the four Sundays next after the principal chapters—viz., Sunday after Michaelmas, Mid-Lent Sunday, Trinity Sunday, and Sunday after Christmas. They were republished by Archbishop Winchelsea, A.D. 1298; by Mepham, A.D. 1328; by Stratford, A.D. 1343; and by Chichele, A.D. 1434. Lynd. 352 says that the rights of the Church consist, among other things, in the free exercise of ecclesiastical jurisdiction.

(58). Const. 11 Clarendon, A.D. 1164: [Ecclesiastics may judge] till they come to deprivation of life or member. Concil. London A.D. 1175, Can. 3: Let not a man in holy orders be concerned in judgments concerning blood, nor by himself nor by other inflict deprivation of member. Alexander III. to Archbishop of Canterbury in Decret. Lib. III. Tit. L. c. 5; Concil. Lat IV. A.D. 1215, Can. 18, *Ibid.* c. 9; Const. 9 Langton, A.D. 1222; Const. 7 Othobon, A.D. 1268. See *Order*, notes 277, 278. On this ground the lords spiritual withdrew from Parliament before the statute 11 Ric. II. c. 1 was passed in 1387 A.D., attainting the Archbishop of York.

(59). This applies to a freehold held under a spiritual person, but not to a benefice held in free-alms, by Const. 9 Clarendon, A.D. 1164, and 13 Ed. I. St. I. c. 5, sec. 4, A.D. 1285; and tenure in free-alms is still retained by 12 Car. II. c. 24.

(60). Const. 1 Clarendon, A.D. 1164; Glanvil. XIII. c. 20. Alexander III. in Decret. Lib. II. Tit. l. c. 3, claimed the cognisance of right of advowson for the Church, but it was not allowed here. Pleas of the Crown, A.D. 1250, in Haddan & Stubbs' Ecclesiastical Documents I. 477; Const. 2, 11, and 16 Boniface, A.D. 1261; Lynd. 217, 281, 316, 352; Devoti Lib. III. Tit. 4, § 5 states that such a withdrawal is lawful either by apostolic privilege or long custom.

(61). 2 Hen. V. St. I. c. 3, A.D. 1414.

held to belong to the secular judge (62); and since courts Christian could only proceed in cases concerning the government of souls, (3) they were not allowed to hold plea if either the person to be made defendant had quitted this life (63), or if he were himself unbaptized, or a Jew (64). Moreover, since it is a rule of justice that no one can be twice punished for the same offence (65), (4) whenever pains and penalties had been awarded by a secular judge, a spiritual court was no longer allowed to impose penalties, though it could still impose penances for the soul's health (66).

17. Here, as in the Roman Empire (67), the Church's juris-

(62). Const. 9 Clarendon and 13 Ed. I. St. I. c. 5, sec. 4, A.D. 1285; see also 13 Ed. I. c. 24, and 14 Ed. III. c. 17; Lynd. 97.

(63). Gratian Caus. XXIV. Qu. II. Decret. Lib. v. Tit. XXXIX. The statute 15 Ed. III. c. 5, A.D. 1341, gives to the king and his heirs "the conusance of usures dead, and that the ordinaries of Holy Church have the conusance of usures on life." Co. Lit. 2 Inst. 632 and 344; Brooke Quare Impedit. Pl. 102; Cunningham's Law of Simony, 50; Hobart, p. 165.

(64). Concil. Tolet. IV. A.D. 633, Can. 56 ap. Gratian I. Dist. XLV. c. 5. This is spoken of as a grievance in Const. 7 Boniface, A.D. 1261, who orders the boycotting of Jews to induce them to answer in the spiritual court. Ayliffe 155: As a heathen or infidel is not a subject of the Church, he cannot be subject to censures inflicted by the Church as a baptized person, who is a member of the Church.

(65). Cap. Reg. Franc. in Decret. Lib. v. Tit. l. c. 6: Crimes in respect of which the accused has once been absolved cannot be made the subject-matter of a second accusation. Egbert's Poenitent. v. 1, A.D. 766, in H. & S. III. 421: Let him be deposed, but not deprived of communion; for God does not take double judgment on him.

(66). 9 Ed. II. St. I. c. 6, A.D. 1315. Boniface VIII. in Sext. Lib. II. Tit. XII. c. 2, in accepting the decisions of temporal courts as matters judicially settled so far as penalties are concerned, excepts them so far as the soul is in peril.

(67). Constantine's Constitution in Extrav. de Epis. Jud. Cod. Theodos. VI. 339, decreed: That all causes which are disposed of by praetorian or civil law, when disposed of by sentence of bishops, shall be confirmed by the perpetual right of stability; nor may a matter be further reopened which the bishop's sentence has decided. See Eusebii Vita Const. IV. 27, and Sozomen I. 9, quoted above, note 23; Lex Marciani in Leg. 14 Cod. de Episc. Audient. Lex Theodosii in Leg. 47 Cod. Theodosii de Episc.

diction was allowed to include (1) purely spiritual matters, (2) mixed matters, and (3) certain temporal matters ([68]). Over the clergy the Church claimed exclusive jurisdiction, not only in civil matters, but also in crimes against fellow-men ([69]); over laymen in all matters affecting their salvation ([70]), including (1)

(68). Theodori Poenit. II. II. 4 in H. and S. III. 191 : The bishop settles the causes of the poor up to 50s., the king when it is more.

(69). Niceph. Hist. VII. 46 ; Concil. Carthag. III. A.D. 397, Can. 9. It is nevertheless a moot point whether the bishop's criminal jurisdiction over the clergy was confined to lesser crimes, or extended to what the civil law regarded as capital crimes. Many edicts reserve the correction of the clergy to the bishop without any reservation ; for instance, Cod. Theodos. de Episc. et Cler. Leg. 41, 42 ; Cod. Justin. de Episc. et Cler. Leg. 1. Justinian's Novels LXXXIII. 1, however, distinguish between *ecclesiastical* and *civil* transgressions, and acknowledge that the emperor has nothing to do with ecclesiastical transgressions. Still, before the civil judge could punish a civil transgression, the offending clerk had to be degraded by his ecclesiastical superior. If the latter refused to degrade him, the whole matter had to be referred to the emperor. Novell. CXXIII. 21. Hence the rule prevalent in the West, that, whatever the nature of the offence, a clerk is in the first instance only amenable to an ecclesiastical tribunal. Concil. Paris V. Can. 4 ; Concil. Matiscon. II. A.D. 585, Can. 10 ; Cap. Reg. Franc. I. 38 ; V. 378, 390 ; VII. 347, 422, 436. Law 4 Alfred and Guthrum, A.D. 878 : If a clerk commit a capital crime he is in the bishop's judgment. This principle was contended for by Becket, and it cost him his life. In 1176 A.D. Henry II. agreed that no clerk should henceforth be imprisoned or brought before a secular tribunal for any criminality or trespass, except trespass of the forest and questions of lay fees for which lay service was due. By the same act the murderers of clerks were to incur forfeiture of their inheritance over and above the customary penalties, and the clergy were not to be compelled to ordeal of battle. Eccles. Courts Commis. Rep. p. XXIV. 25 Ed. III. St. III. c. 4, A.D. 1350, enacted that clerks convicted of felony or treason should be delivered to their ordinaries.

(70). Concil. Arelat. A.D. 314, Can. 7 : As touching the faithful who are advanced to judgeships, let them when promoted receive letters of communion ; yet so that in whatever place their office takes them, they shall be under the care of the bishop of that place, and shall be excluded from communion so soon as they begin to act contrary to discipline. The same with those who hold offices of state. Basil Ep. VI. relates that St. Athanasius excommunicated a governor of Libya on account of cruelty and excesses. Synesius, Bishop of Ptolemais, Epist. 58, relates how, because of his cruelty and excesses, he had excommunicated the prefect, Andron-

the correction of immorality, which the law of the state did not touch, and (2) the correction of breaches of faith and offences against character, for which there were remedies provided by the common law, such as breach of contract, perjury, slander, and the like. The claim of exclusive jurisdiction over clergy was so far allowed as to exempt them from the death penalty if found guilty by a temporal court (71), and was generally known as "*benefit of clergy.*" But the claim of jurisdiction over laymen, even in spiritual matters, was constantly resisted. Nevertheless, it was practically maintained until the Reformation, and in some points even to modern times (72).

18. Spiritual causes, which properly belong to the province of courts Christian, are usually said to be of five kinds, viz. (1) those which concern faith and morals (73), such as simony (74),

icus. Socrates VII. 13 : Orestes [the governor] long regarded with jealousy the power of the bishops, because they claimed to have a far greater rule than those appointed by the king, most of all because [Bishop] Cyril wished to overlook his proceedings. In Augustin Ep. 152, Macedonius, Governor of Africa, writes : You say it is the bishop's office to intercede for the guilty, . . . but I very much doubt whether this claim of yours comes from religion. For if sins are so forbidden by God that there is no room for repentance except once, how can you contend that, as a matter of religion, we [the civil authorities] ought to overlook every crime, whatever it may be ? For, by leaving it unpunished, we should be approving it. See Ecclesiastical Courts Commission Report, p. XXII.

(71). 7 and 8 Georg. IV. c. 28, A.D. 1827 : Be it enacted that benefit of clergy, with respect to persons convicted of felony, shall be abolished.

(72). Eccles. Courts. Commis. Report, p. XXII.

(73). 13 Ed. I. St. IV. c. 1, A.D. 1285 (Circumspecte agatis), in Lynd. 96, directs the king's justices not to grant prohibition "for penance enjoined by prelates for deadly sin, as fornication, adultery, and such like, for the which sometimes corporal penance and sometimes pecuniary is enjoined, if a freeman be convict of such things." 9 Ed. II. St. I. c. 2, A.D. 1315 : If a prelate enjoin a penance pecuniary to a man for his offence, and it be demanded [in a spiritual court], the king's prohibition shall hold place. But if prelates enjoin a penance corporal, and they which be so punished shall redeem upon their own accord such penances by money, if money be demanded before a judge spiritual, the king's prohibition shall hold no place.

(74). In *Mackaller* v. *Todderick*, Cro. Car. 36, simony was stated to be an offence at common law [which is true (see Hobart) if the guilty person is

usury (75), heresy (76), and the public teaching of religion (77); (2) those which concern the sacraments, including wedlock and bigamy (78), but not wedlock as a civil contract (79); (3) those

dead], but this was denied in Moor 564. The statute 31 Eliz. c. 6, which attached temporal penalties to certain forms of simony, was careful to preserve, and therefore to recognise, the spiritual jurisdiction in sec. 9.

(75). 15 Ed. III. c. 5, A.D. 1341 : And that the ordinaries of Holy Church have the conusance of usures on life, as to them appertaineth to make compulsion by the censures of Holy Church for the sin, to make restitution of the usures taken against the laws of Holy Church. 3 Hen. VII. c. 5, A.D. 1486 ; 11 Hen. VII. c. 8, A.D. 1494, to the like effect. By 13 Eliz. c. 8, the only usury with which a spiritual court can deal is letting money out to use on condition of receiving more than 10 per cent. for it. Law's Forms 44.

(76). Heresy is named in 2 Hen. V. St. I. c. 7 ; 26 Hen. VIII. c. 1 ; 1 Eliz. c. 1, sec. 17.

(77). Concil. Westminster A.D. 1138, Can. 17 : If schoolmasters hire out their schools to be governed by others, that they be liable to ecclesiastical punishment. Const. 4 Arundel, A.D. 1408, directs schoolmasters not to teach contrary to the rulings of the Church. See 34 and 35 Hen. VIII. c. 1 ; 2 Jac. I. c. 4, sec. 9 ; Cox's case in Stephens' Eccl. Stat. 509. *Rutter* v. *Wainwright*, No. 82, in Rothery's Ecclesiastical Appeals, 1868.

(78). 18 Ed. III. St. III. c. 2, allows spiritual courts to deal with bigamy.

(79). Benedict XIV. de Syn. Dioc. Lib. IX. c. 9, § 2, says there are three kinds of matrimonial causes : (1) those which concern the sacramental validity of wedlock—these are purely spiritual ; (2) those which concern wedlock as a civil contract, and separation from bed and board, or the interruption of the civil contract—these are mixed causes ; and (3) those which concern the temporal results of wedlock, such as the legitimacy or bastardy of offspring, and rights of succession to property—these are temporal causes. See *Wedlock*, § 2. Of the first kind was the question as to the sacramental validity of Lothair's marriage with Thietberga. This was first heard in a national council at Aachen, A.D. 860 (Labbé X. 140 and 200). On appeal to Nicolaus I., he ruled that the matter did not concern the lay judge, and referred it to the Council of Metz (Labbé X. 1413). Const. 20 Langton, A.D. 1222, forbids rural deans to meddle with the hearing of such cases. Mixed cases concerning marriage were, like other contracts, also cognisable in the spiritual courts for purposes of discipline. Alexander III. in Decret. Lib. IV. Tit. 1. c. 10, and Tit. XIX. c. 3 ; but from Reynold's Constitution, A.D. 1313, the matter seems to have been considered doubtful. 18 Ed. III. St. III. c. 2 recognised them as being of spiritual cognisance, and also 24 Hen. VIII. c. 12, quoted below, note 83, and so they continued until 1857.

which concern public worship, and the duties of the clergy in relation thereto (80); (4) those which concern the discipline of regulars and the religious life (81); and (5) those which concern ecclesiastical censures.

19. Mixed causes which were in this country generally allowed to be of spiritual cognisance include (82): (1) those relating to spiritual benefices, tithes, and customary offerings (83), such as suits for pensions charged on benefices (84), for neglect of Church repairs (85), dilapida-

(80). In this country, spiritual courts are, in respect of worship, called upon to carry out the Statute of Uniformity, 2 and 3 Ed. VI. A.D. 1549; 5 and 6 Ed. VI.; 13 and 14 Car. II. c. 4, A.D. 1662, and the relaxing statutes; but violations of the Act of Uniformity may also form the subject-matter of indictment in the temporal courts. See Eccles. Courts Com. Report.

(81). Gregory ap. Gratian Caus. XIX. Qu. III. c. 7. Const. 45 Langton, A.D. 1222: Religious persons have no temporal right. They were in law considered to be dead persons before civil rights were restored to them by 31 Hen. VIII. c. 6; 33 Hen. VIII. c. 29, and 5 and 6 Ed. VI. c. 13. See *Discipline of the Religious Life*, notes 72 and 194.

(82). Report of Commissioners to inquire into the jurisdiction of ecclesiastical courts, A.D. 1832, pp. 12, 13; Rothery's Ecclesiastical Appeals, IV.

(83). 9 Ed. II. St. I. c. 1, A.D. 1315: In oblations and obventions the king's prohibition shall hold no place. 2 Hen. V. St. I. c. 3; 24 Hen. VIII. c. 12, sec. 2, recites that all causes testamentary, causes of matrimony and divorce, rights of tithes, oblations, and obventions, the knowledge whereof, by the goodness of princes of this realm, and by the laws and customs of the same, appertain to the spiritual jurisdiction.

(84). 13 Ed. I. St. IV. c. 1, A.D. 1285 (Circumspecte agatis) forbids prohibition: If a prelate of a Church demand of a parson a pension due to him [such as a cathedraticium or synodaticum]. In *Johnson* v. *Ryson*, 12 Mod. 416, the court, referring to the case of *Hinde* v. *Bishop of Chester*, Cro. Car. 237, observed: Though a writ of annuity may lie for a pension by prescription, and is so recoverable at common law, yet it may be sued for in the spiritual court. Stephen's Eccl. Stat. 128; Ayliffe, 433.

(85). 13 Ed. I. St. IV. c. 1, A.D. 1285: Also if prelates do punish for leaving the churchyard unenclosed, or for that the Church is uncovered or not conveniently decked, in which cases none other penance can be enjoined but pecuniary. Const. 6 Stratford, A.D. 1342. Cf. Lit. 2 Inst. 489; 3 Blackstone Com. 92. The statute 53 Geo. III. c. 127, sec. 7, gave to magistrates

tions (86), spoliation (87), the recovery of tithes (88), and mor-

the adjudication of Church rate suits when the amount claimed was under £10. The compulsory Church-rates abolition act, 31 & 32 Vict. c. 109, A.D. 1868, forbids all suits to compel payment of Church rates.

(86). There were anciently of ecclesiastical cognisance. Stephens' Eccl. Stat. p. 425. 52 Hen. III. c. 28, A.D. 1267, however, allows the successors of prelates to have "actions to demand the goods of their Churches out of the hands of trespassers," and 13 Ed. I. St. I. c. 24, A.D. 1283, confirmed by 14 Ed. III. St. I. c. 17, gives to the successor of a parson right to writs called *Juris utrum* and *Quod permittat* to recover alienations made by a predecessor. Yet 35 Ed. I. St. II. A.D. 1307, and 13 Eliz. c. 10, A.D. 1570, recognise them as of spiritual cognisance. By the Dilapidations Act, 34 and 35 Vict. c. 43, and 35 & 36 Vict. c. 96, A.D. 1871, they are recoverable at law only.

(87). Spoliation is not the subtraction of rent or tithes by the tenant of a spiritual person, but the getting hold of the spiritual income of an ecclesiastical benefice by one who has no right thereto, as in a case of controversy for the incumbency between two clerks both presented by the same patron, provided it does not raise the question of advowson. By Edward's Law 5, A.D. 1064; Concil. Westminster A.D. 1125, Can. 9; Concil. London A.D. 1126, Can. 9; Concil. London A.D. 1175, Can. 13, such a right was triable in the spiritual court, but the suit had first to be commenced in the kings court by Const. 9 Clarendon, A.D. 1164, and sec. 4 of 13 Ed. I. St. I. c. 5, to determine that neither the right of advowson nor the extent of the parish was in issue. By 9 Ed. II. St. I. c. 9, A.D. 1315, the sheriff was not allowed to execute distresses "in the ancient fees of the Church," *i.e*, in the lands and benefices held by the Church before the twentieth year of Edward I., in which year the valuation by Pope Nicolas was made. 18 Ed. II. St. III. c. 7, A.D. 1344, enacted that writs of *Scire facias* should not issue "to warn prelates, religious, and other clerks to answer dismes in our chancery, and to show if they have anything or can anything say wherefore such dismes ought not to be restored to the said demandants, and answer as well to us as to the party of such dismes," but "that the process hanging upon such writs be annulled and repealed, and that the parties be dismissed from the secular judges of such matters." 25 Ed. III. c. 8, A.D. 1350, enacts that cognisance of voidance rests with the spiritual judge. See Bracton vol. vi. 217 (ed. 1878), and the action of Giraldus, elected Bishop of St. David's A.D. 1199, in Haddan and Stubbs I. 428, and Hook's Lives II. 628. After the dissolution of monasteries, 32 Hen. VIII. c. 7 sec. 7 was passed, enabling lay-holders to maintain rights to spiritual tithes and benefices in secular courts. 12 Car. II. c. 17, sec. 28, authorises the sheriff to give possession of the benefice of one deprived by that act, showing that he had ordinarily no such jurisdiction. See *Titchborne* v. *Swale*, No. 25; *Aisgill* v. *Bargrave*, No. 30; *Viscount Loftus* v. *Archbishop of Dublin*, No. 44 in Rothery's Report (1868); *Hill* v. *Barne*, 2 Lev. 250.

tuaries (89); (2) causes of contract, constructive contract, tres-

(88). 13 Ed. I. St. IV. c. 1, A.D. 1285 : If a parson demand tithes greater or smaller, so that the fourth part of the value of the benefice be not demanded. Suits for tithes were brought in the spiritual court except in two cases: (1) if the tithes demanded amounted to one-fourth part of the value of the benefice ; and (2) if the demand of tithes involved parish boundaries. The reason for the first exception was that a fourth part of the value or more was usually reserved on a grant of real estate (see 6 Ed. I. c. 4, A.D. 1278, and 13 Ed. I. St. I. c. 41, sec. 3), so that when a demand was made for the fourth part, the presumption was that the claim was for a composition real, and that the revenues of the benefice had been let to farm. 9 Ed. II. St. I. c. 1, A.D. 1315 ; In tithes, &c. . . the king's prohibition shall hold no place, although for the long withholding of the same the money may be esteemed at a sum certain. But if a clerk or a religious man do sell his tithes, being gathered in his barn or otherwise, to any man for money, if the money be demanded before a spiritual judge the king's prohibition shall lie, for by the sale the spiritual goods are made temporal, and the tithes are turned into chattels. Leases of benefices were forbidden by 35 Ed. I. St. I. c. 2 ; 3 Ric. II. c. 2 ; 7 Ric. II. c. 12 ; 13 Eliz. c. 20 ; Co. Inst. 490. The reason for the second exception was that if a parson demanded tithes in what was held to be another's parish, he could be prohibited by a writ of *Indicavit*, pursuant to Const. 9 Clarendon A.D. 1164, and then could not recover them at all before 13 Ed. I. St. I. c. 5, sec. 4 ; Co. Inst. 364. 9 Ed. II. St. I. c. 2 : If debate do arise upon the right of tithes, *having his original from the right of the patronage*, and the quantity of the same tithes do come unto the fourth part of the goods of the church, the king's prohibition shall hold place if the cause come before a judge spiritual [*i.e.*, unless the suit was commenced as required by Const. 9 Clarendon and 13 Ed. I. c. 5 in the king's court]. 45 Ed. III. c. 3, A.D. 1372, directed prohibition to issue if tithes were claimed of timber. Lynd. 109, 281. 32 Hen. VIII. c. 7, confirmed by 2 and 3 Ed. VI. c. 13, orders all tithes to be paid according to custom, and directs the withholder to be convened before the ordinary. 1 Ric. II. c. 14 requires a spiritual person claiming tithes in a secular court to show how they have become a lay-chattel. 32 Hen. VIII. c. 7, sec. 7, empowered temporal grantees of them to sue for them in secular courts. Suits for tithes of small value have been transferred to the civil magistrates by 7 & 8 Will. III. c. 6, sec. 1, A.D. 1696 ; 53 Geo. III. c. 127, sec. 4, A.D. 1813 ; 5 & 6 Will. IV. c. 74, sec. 1, A.D. 1835 ; and 4 & 5 Vict. c. 36, A.D. 1841. The Tithe Commutation Act, 6 & 7 Will. IV. c. 71, A.D. 1836, made them recoverable by distress, and the Tithe Recovery Act, 54 Vict. c. 8, A.D. 1891, makes them recoverable in the County Court.

(89). 13 Ed. I. St. IV. c. 1 : If a parson demand mortuaries in places

pass, and constructive trespass (90), including jactitation of marriage (91) and other cases of defamation (92), but only when brought for purposes of correction, and not to obtain money; and (3) causes involving assault or violence offered to clerks and religious persons (93).

where a mortuary hath been used to be given. 9 Ed. II. St. I. c. 1, A.D. 1315. The payment of mortuaries was limited by 21 Hen. VIII. c. 6.

(90). Alfred's Law 1, A.D. 877: Let satisfaction be made for breach of suretyship as the law directs, and for breach of covenant as the shrift shall require. Const. 1 and 6 Boniface, A.D. 1261, enumerates contract, quasi-contract, trespass, and quasi-trespass. Lynd. 162; but by Const. 15 Clarendon the jurisdiction of spiritual courts does not apply to debts founded on breaches of covenant except between spiritual persons. 2 Hen. V. St. I. c. 3, A.D. 1414, exempts from the jurisdiction of spiritual courts questions of freehold, debt, trespasses, and covenants. 16 Car. I. c. 11 forbids a spiritual judge to inflict any temporal penalty.

(91). *I.e.*, pretending to a marriage which has no existence in fact. This gave rise to three defences: (1) a denial of the jactitation or malicious boast which rendered it a case of defamation; (2) admission of the jactitation, but pleading a marriage *de facto*, which was the means of establishing an irregular marriage; (3) admitting the jactitation without pleading marriage, but pleading a license to assume the character of a wife. See Rogers' Ecclesiastical Law, 572.

(92). Concil. Elib. Can. 52, A.D. 305, ap Gratian Caus. V. Qu. I. c. 3: Let those be anathematised who have placed defamatory writings before the Church. Pseudo-Isidor. ap. Gratian Caus. II. Qu. III. c. 5 admits that words spoken in anger are not defamation (convicium). Syn. VIII. A.D. 869, *Ibid.* Caus. V. Qu. VI. c. 7: If any one has falsely aspersed the person of the innocent, let him be judged. 38 Hen. III. A.D. 1253, gave legislative sanction to the curses of Const. 1 and 29 Langton, A.D. 1222, of which one cursed those who defamed the good. 13 Ed. I. St. IV. c. 1, A.D. 1285: In causes of defamation it hath been already granted that it shall be tried in a spiritual court, when money is not demanded but a thing done for punishment of sin. 9 Ed. II. St. I. c. 4; but St. 1 Ed. III. St. II. c. 11, A.D. 1327, allows prohibition if the process is abused. Co. Lit. 2 Inst. 492; Stephens' Eccl. Stat. 44. 18 & 19 Vict. c. 41, A.D. 1855, abolished this jurisdiction, and 23 & 24 Vict. c. 32, A.D. 1860, abolished spiritual suits for brawling.

(93). Cnut's Law 13, A.D. 1018: If one bind or beat or grievously reproach an ecclesiastical person, let him make satisfaction as right is; and let the bishop have the satisfaction due to the altar, and let satisfaction be paid to the lord or the king as for a notable breach of his protection.

20. Temporal causes, the cognisance of which was allowed to spiritual judges, included: (1) proof of testaments and grant of administrations (94), at least since the twelfth and thirteenth centuries (95); and (2) from Saxon times questions of legitimacy and bastardy (96). They were nevertheless required to decide them not according to Roman law, but according to English statutes (97).

21. Legal recognition of the authority of spiritual courts was

Concil. Westminster A.D. 1138, Can. 10. 13 Ed. I. St. IV. c. 1: And for laying violent hands on a clerk . . . it hath been already granted that it shall be tried in a spiritual court. 9 Ed. II. St. I. c. 3, A.D. 1315; 50 Ed. III. c. 5, A.D. 1375; 1 Ric. II. c. 15; 5 & 6 Ed. VI. c. 4, repealed by 9 Geo. IV. c. 31.

(94). Concil. Paris III. A.D. 557, Can. 9, and Concil. Lugdun. II. A.D. 567, Can. 2, order effect to be given to the wishes of the dead. Glanvil VII. c. 6; Bracton II. 26; Fleta II. 57 speak of this as an ancient right, and as such it is allowed in Magna Carta, A.D. 1215, 13 Ed. I. St. I. c. 19, A.D. 1285; 18 Ed. III. St. III. c. 6; 31 Ed. III. St. I. c. 4 and 11; 3 Hen. V. St. II. c. 8; 21 Hen. VIII. c. 5; and specially by 24 Hen. VIII. c. 12, quoted above, note 99; Stephens' Eccl. Stat. 51. Regulations on this subject are found in Const. 15 Boniface, A.D. 1261; Const. 14 Othobon, A.D. 1268; Const. 5 Stratford, 1342; Const. 7 Stratford, A.D. 1343. Wills and administrations were withdrawn from spiritual cognisance by 20 & 21 Vict. c. 77 & 85, A.D. 1857, and 21 & 22 Vict. c. 95.

(95). Ecclesiastical Courts Commission Report, 1883, p. xxii., states that this was not allowed without a struggle. It is recognised by Article 27 of Magna Carta, which was withdrawn in subsequent issues, but asserted in Const. 15 Boniface, A.D. 1261.

(96). These were claimed to be of spiritual cognisance by Alexander III. to Bishop of Exeter, *Ibid.* Lib. IV. Lit. XVII. c. 4, 5, and 6, and to bishops of London and Worcester, *Ibid.* c. 7, and the claim was never disputed. See Crown Pleas, A.D. 1251, in Haddan and Stubbs I. 478. 25 Ed. III. St. II. A.D. 1350, also says: If it be alleged against any born beyond sea that he is a bastard [in an assize of mort dancestor] in a case where the bishop ought to have cognisance of bastardy, it shall be commanded to the bishop of the place to certify the king's court, as of old hath been used in the case of bastardy alleged against them which were born in England. 9 Hen. VI. c. 11. See Devoti Lib. III. Tit. IV. § 3.

(97). 20 Hen. III. c. 9, A.D. 1235: All the bishops instanted the magnates to consent that those born before matrimony should be held legitimate. But all the earls and barons replied unanimously: We will not change the approved and customary laws of England.

given by the so-called Writ of Consultation, awarded in the reign of Edward I. (98), and by statutes passed in that and the two succeeding reigns, whereby (1) prohibition was forbidden to issue from the king's court in cases allowed to be of spiritual cognisance (99); (2) secular judges were forbidden to inquire of process awarded by spiritual judges when dealing with matters within their jurisdiction (100); and (3) prohibition was altogether disallowed after consultation (101). In succeeding reigns the franchises of the Church, which included the jurisdiction of spiritual courts, were confirmed by statutes (102), more particularly those of Edward VI. (103),

(98). 24 Ed. I. A.D. 1296.

(99). 13 Ed. I. St. IV. c. 1, A.D. 1285; Lynd. 96; 9 Ed. II. St. I. A.D. 1315; 18 Ed. III. St. III. c. 5, A.D. 1344: No prohibition shall be awarded out of the chancery, but in cases where we have the cognisance and of right ought to have. See Law Journal, vol. xxiv. p. 331.

(100). 18 Ed. III. St. III. c. 6: Whereas commissions be newly made to divers justices that they shall make inquiries upon judges of Holy Church whether they made just process or excessive in causes testamentary and other, which notoriously pertaineth to the cognisance of Holy Church, the said justices have inquired and caused to be indicted judges of holy Church in blemishing of the franchise of holy Church; that such commissions be repealed and from henceforth defended, saving the article in *eyre* such as ought to be.

(101). 50 Ed. III. c. 4, A.D. 1376: It is ordained and established of the said assent, that whereas a consultation is once duly granted upon a prohibition made to the judge of the holy Church, that the same judge may proceed in the cause by virtue of the same consultation notwithstanding any other prohibition thereupon to him delivered; provided always that the matter in the libel of the said cause be not engrossed, enlarged, or otherwise changed.

(102). 25 Ed. III. St. III. c. 1, A.D. 1350: That all the privileges and franchises granted heretofore to the said clergy be confirmed and holden in all points. 50 Ed. III. c. 1, A.D. 1376: It is ordained and established that Holy Church have all her liberties and franchises in quietness, without impeachment or other disturbance. 1 Hen. IV. c. 1, A.D. 1399; 4 Hen. IV. c. 3; 3 Hen. V. St. II. c. 1, A.D. 1415; 2 Hen. VI. c. 1, A.D. 1423; Const. Chichele, A.D. 1434.

(103). 2 and 3 Ed. VI. c. 13, sec. 15, declares that the jurisdiction of spiritual courts does not extend to matters excepted therefrom (1) by the statute of Westminster the second, the fifth chapter [*i.e.*, 13 Ed. I. St. I.

Elizabeth (104), and Charles II. (105); and a concurrent jurisdiction was bestowed upon them in dealing with the newly created offences against religion by the statutes of Edward VI. (106) and Elizabeth (107). Effect was, moreover, given to their decisions (1) by the common law practice of imprisoning one who remained excommunicate for more than forty days without coming to satisfaction (108), and (2) at one time by statutes authorising the bishops to arrest and imprison offenders in cases of heresy (109).

c. 5]; (2) by the statutes of *Articuli cleri* [*i.e.*, 13 Ed. I. St. I.]; (3) by the statute *Circumspecte agatis* [13 Ed. I. St. IV. c. 1]; (4) by the statute of *Sylva caedua* [45 Ed. III. c. 3]; (5) by the treatise *de Regia Prohibitione* [which Lord Coke, 2 Inst. 599a, says is the treatise entitled *Prohibitio Formata super Articulis*]; and (6) by the statute in the first year of Edward III., the tenth chapter [1 Ed. III. St. II. c. 10 forbids grants of corrodies at the king's request; but chapter 11, which appears to be meant, declares: No suit shall be made in the spiritual court against indictors].

(104). 23 Eliz. c. 1, sec. 15, A.D. 1581.

(105). 13 Car. II. c. 12: Archbishops, bishops, or any other persons exercising ecclesiastical jurisdiction may proceed, determine, sentence, execute, and exercise all manner of ecclesiastical jurisdiction . . . in all causes and matters belonging to ecclesiastical jurisdiction, according to the king's majesty's ecclesiastical laws used and practised in this realm, in as ample manner and form as they did and might lawfully have done before the making of the said Act [16 Car. I. c. 11].

(106). 2 and 3 Ed. VI. c. 1, sec. 12.

(107). 1 Eliz. c. 2, sec. 23. In *Britton* v. *Standish*, 6 Mod. 188, prohibition was refused to the spiritual court acting under this statute. Stephens' Eccl. Stat. 367.

(108). Edward's Law 7, A.D. 1064: If any one infringe the Church's protection it concerns the bishop's courts. If the guilty person decline or despise their sentence, let complaint of it be brought to the king after forty days. And the king's court shall put him under security to make satisfaction first to God and then to the king and Church. Law's Forms 129, 135.

(109). Richard II. issued a writ, 12th July 1382, empowering the archbishop and his suffragans to arrest and commit to their own or other prisons persons who preached or maintained the condemned conclusions. Stat. 2 Hen. IV. c. 15, and 2 Hen. V. c. 7, A.D. 1414, gave them a statutory right to decide cases of heresy, but these statutes were repealed in Henry VIII.'s time. See Ecclesiastical Courts Commission Report, 1883, p. 53.

22. On the other hand, the civil courts always took upon themselves to restrain the jurisdiction of spiritual courts to matters allowed to them by law, for which purpose the so-called Writ of Prohibition (110) was resorted to. This writ, which was extensively employed in the reign of Henry III., is now by custom limited to three cases: (1) when a spiritual court has proceeded with no original power of jurisdiction (111); (2) when incidentally it has exceeded its jurisdiction (112); and (3) when it has acted with entire disregard of law and justice (113). Usually such writs are applied for and granted before sentence is given in the spiritual court (114), yet in some cases they may be

(110). Geoffry Fitz-Peter, as justiciar, prohibited Hubert Walter as legate from holding pleas. See Stubbs in Ecclesiastical Courts Commission, p. 31. Glanvil and Bracton speak of prohibitions as recognised institutions; but Henry III.'s reign is the great era of them. Prohibition was then granted against spiritual courts for entertaining suits touching freeholds, touching the king's peace, touching debt cognisable at common law, touching tithe of essarts or newly reclaimed land, touching the archbishop's order forbidding the sale of provisions to the canons of St. Oswald, for admission of plea after it had been decided in the king's court. 13 Ed. I. St. IV. c. 1, A.D. 1285, prescribes a number of cases in which they shall not issue. By 8 and 9 Will. III. c. 11, sec. 3, and 1 Will. IV. c. 21, the costs of a successful prohibition fall upon the person prohibited. Ayliffe 435; Stephens' Eccl. Stat. 663 and 1443.

(111). *Pro defectu jurisdictionis*, either (1) because the suit, not being a matter of spiritual cognisance, no spiritual court can entertain it; or (2) because being of spiritual cognisance, the particular court in which it is brought cannot entertain it. Thus where the lord of a manor has probate of wills, prohibition lies if a spiritual court attempt to grant probate. See Stephens' Eccl. Stat. p. 52, note; Viner's Abr. Prohib. C. a. 1.

(112). *Pro defectu triationis*, which is not the want of jurisdiction over the subject-matter of the suit, but the cropping up of a matter incidentally over which the court has no jurisdiction. Thus the question of a custom or prescription is not allowed to be tried in a spiritual court. Vin. Abr. Prohib. F. 16. See Tindal, C. J., in *Veley* v. *Burder*, 12 A. and E. 360, and Stephens' Eccl. Statutes, 1530, note.

(113). For proceeding as the law does not warrant, as by refusing a legal defence, or not hearing a clerk in self-defence, as in Poole's case, *Reg.* v. *Archbishop of Canterbury*, 28 L. J. p. 154; or for failure of justice, as laid down in Edward's Law 5, A.D. 1064.

(114). In *Ricketts* v. *Bodenham*, 4 A. and E. 433, Lord Denman observed:

had after sentence (115). There are nevertheless two cases in which they are not allowed to issue, viz. (1) when a simple disregard of the usual practice is all that is alleged (116), and (2) when justice can be properly obtained by appeal in the spiritual court (117).

23. The tendency of post-mediaeval legislation has been everywhere to confine spiritual courts to spiritual matters, and even for civil courts to encroach upon spiritual matters under the plea of enforcing a civil contract (118). In some countries

And there is no doubt that in the case of prohibitions to be granted for the sake of trial, as distinguished from those which are to be granted upon account of a wrong trial or erroneous judgment, the rule is established that a party neglecting to contest the jurisdiction in the first instance and taking his chance of a favourable decree, shall not be allowed after sentence to allege the want of jurisdiction as a ground of prohibition. Stephens' Eccl. Stat. p. 1058.

(115). Prohibition after sentence is granted in the following cases: (1) Where there is a defect in the original jurisdiction—Coke 2 Inst. 619; (2) where the spiritual court has proceeded in a way the law does not warrant; (3) where the spiritual court has erred in the construction of an Act of Parliament. In *ex parte Mary Evans*, 2 Dowl. P. C. N. S. 726, Mr. Justice Williams observed on the question whether the application after sentence came too late: Upon that point I entertain no doubt. It seems to me to be clear that the application is not too late if an excess of jurisdiction appears. Stephens' Eccl. Stat. 1443.

(116). In *Jolly* v. *Barnes*, 12 A. and E. 201, the Court of Queen's Bench refused to enter into questions as to the practice of the ecclesiastical courts, as to whether witnesses in a suit had been examined conformably to a general order of the Court of Arches, although such order was made by virtue of 10 Geo. IV. c. 53, s. 9, Lord Denman stating: that "if it were so, it is a matter of irregularity in practice only, and no ground for this court to interfere by Writ of Prohibition." Stephens' Eccl. Stat. p. 1417, note. See Lord Blackburn in *Maconochie* v. *Lord Penzance*, 6 Ap. Ca. 443; Lynd. p. 266 says the same.

(117). *Titchmarch* v. *Chapman*, 1 Dowl. and Lowndes 732; Tindal, C. J., in *Veley* v. *Burder*, 12 A. and E. 360, and Stephens' Eccl. Stat. p. 1531, note; *Maconochie* v. *Lord Penzance*, 6 Ap. Ca. p. 443; Stephens' Eccl. Stat. p. 1056.

(118). In *Brown* v. *Curé*, Law Reports, 6 P. C. 87, the Privy Council decreed the interment of Guibard, who had been excommunicated, in a Roman Catholic cemetery, on the ground that the law of the Canadian Catholics could not be altered without the consent of the government.

this legislation has given rise to much friction (119). In this country the change was brought about peaceably, by the entire submission of the clergy, under Henry VIII. By the acts of submission and supremacy, the sovereign was acknowledged to hold the position formerly held by the pope as supreme head (120) or governor (121) of the English Church; and although these acts were limited in intention to the pope's feudal position in relation to property held in free-alms (122), yet by the construction which has since been put upon them in courts of law, courts Christian have been transformed into the ecclesiastical courts of the Crown (123), the canon law of the Church

(119). Witness the friction still existing in Italy owing to the pope's loss of temporal power, the Cultur Kampf in Germany, the oppression of the Church in France.

(120). 25 Hen. VIII. c. 19, A.D. 1533; 28 Hen. VIII. c. 1, A.D. 1534: That the king, our sovereign lord, his heirs and successors, kings of this realm, shall be taken, accepted, and reputed the only supreme head on earth of the Church of England, called Ecclesia Anglicana; and shall have and enjoy, annexed and united to the imperial crown of this realm, as well the title and style thereof, as all honours, dignities, pre-eminences, jurisdictions, privileges, authorities, immunities, profits, and commodities to the said dignity of supreme head of the same Church belonging and appertaining. 35 Hen. VIII. c. 3 gives him the title "of the Church of England, and also of Ireland, on earth supreme Head.

(121). The oath required by sec. 19 of 1 Eliz. c. 1 is: "that the Queen's highness is the only supreme governour of this realm, and of all other her highness's dominions and countries, as well in all spiritual or ecclesiastical things or causes as temporal." Stephens' Ecc. Stat. 358.

(122). The First Lateran Council, A.D. 1123, acknowledged the pope as supreme liege lord of the Church, and King John did the same, A.D. 1215. Hen. VIII. by these acts renounced that supremacy, claiming to be himself supreme liege lord, and his country to be an empire; and the clergy assented "so far as the law of Christ allowed."

(123). Sec. 17 of 1 Eliz. c. 1: That such jurisdictions, privileges, superiorities, and pre-eminences, spiritual and ecclesiastical, as by any spiritual or ecclesiastical power or authority hath heretofore been, or may lawfully be, exercised or used for the visitation of the ecclesiastical state and persons, and for reformation, order, and correction of the same, and of all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities shall for ever, by authority of this present parliament, be united

has made way for the ecclesiastical law of the sovereign (124), parliamentary statutes have taken the place of conciliar decrees (125), and the Judicial Committee of the Privy Council that of the supreme advising congregations of the Church (126).

24. In recent times, the civil disabilities incurred by sentences of ecclesiastical courts have been almost entirely abolished by the enactment (1) that excommunication should no longer be employed as a means of compelling obedience to judicial orders, but only be awarded in a definitive sentence, or in an interlocutory decree having the force and effect of a definitive sentence; (2) that it should no longer be awarded, except as a spiritual censure for offences of ecclesiastical cognisance; and (3) that the only civil effect of excommunication should be such imprisonment, not exceeding six months, as the court pronouncing the sentence or decree should direct (127). The

and annexed to the imperial crown of this realm. The king's ecclesiastical court is mentioned 2 and 3 Ed. VI. c. 14.

(124). 2 & 3 Ed. VI. c. 13, sec. 2: The same to be recovered before the ecclesiastical judge, according to the king's ecclesiastical law. 1 Eliz. c. 2, sec. 23; 13 Car. II. c. 12.

(125). In the legislation of the last sixty years, archbishops and bishops seem to have competed with statesmen to destroy every organisation designed to carry out the principles of the Church, and to assimilate it to the utilitarian standard of the world.

(126). In place of appeals to the pope, the statute 25 Hen. VIII. c. 19 permitted appeals from the archbishop's court to the king in chancery, the practice being for the Lord Chancellor on petition to appoint certain delegates to hear the appeal, that body being called the Court of Delegates. Should their decision not be satisfactory, a Commission of Review might be granted under the great seal on petition to the king in council, "to revise, review, and rehear the case." The Act 2 & 3 Will. IV. c. 92 prohibited the granting in future of Commissions of Review, and the Act 3 and 4 Will. IV. c. 41 transferred the powers and jurisdiction of the Court of Delegates to the Judicial Committee of the Privy Council. An entirely new court was thus established as the supreme court of appeal in matters ecclesiastical.

(127). 53 Geo. III. c. 127, A.D. 1813, enacts: Excommunication, together with all proceedings following thereupon, shall in all cases, save those hereafter to be specified, be discontinued, and that instead thereof the person shall be pronounced contumacious. Sec. 2 provides that sentences of ex-

jurisdiction of ecclesiastical courts has also been abolished in tithe cases (128), causes of defamation (129), suits against laymen for brawling (130), causes of matrimony and divorce (131), probate and administration (132), suits for Church rates (133), and the religious teaching of the young (134).

25. The jurisdiction which is still retained by them in this country extends to: (1) disciplinary causes, or causes concerning excesses and irregularities of the clergy (135), in respect of faith, morals, public worship (136), and the discharge of their official duties; (2) discretionary causes, or causes involving the exercise of discretion by ordinaries, such as admitting or refusing to admit to a benefice (137), giving or withholding licenses to clergy (138), giving or refusing the sacraments, and dedicating

communication may be pronounced "as spiritual censures for offences of ecclesiastical cognisance;" but sec. 3 provides "that no person who shall be so pronounced or declared excommunicate shall incur any civil penalty or incapacity whatever in consequence of such excommunication, save such imprisonment, not exceeding six months, as the court pronouncing or declaring such person excommunicate shall direct." Rothery's Appeals, p. v.

(128). By 6 and 7 Will. IV. c. 71, A.D. 1836.

(129). 18 and 19 Vict. c. 41, A.D. 1855.

(130). 23 and 24 Vict. c. 32, A.D. 1860.

(131). 20 and 21 Vict. c. 85, A.D. 1857.

(132). 20 and 21 Vict. c. 77; 21 and 22 Vict. c. 95.

(133). 31 and 32 Vict. c. 109, A.D. 1868.

(134). Elementary Education Act, A.D. 1870.

(135). Const. 1 Boniface, A.D. 1261; 13 Ed. I. St. IV. c. 1, A.D. 1285.

(136). By the Public Worship Act, 1874, 37 & 38 Vict. c. 85, by sec. 7, the archdeacon of an archdeaconry, the churchwarden of a parish, or any three parishioners of the parish, or, in the case of a cathedral, of the diocese, may complain of any addition or alteration of the services or ornaments, which the bishop may dispose of summarily by consent, or otherwise refer to the parliamentary judge created by the statute, to be decided by him, unless, having regard to all the circumstances of the case, the bishop declines to refer it.

(137). 9 Ed. II. St. I. c. 13, A.D. 1315: Of the ability of a person presented unto the benefice of a Church, the examination belongeth to the spiritual judge, and so it hath been used heretofore, and shall be hereafter. Co. Lit. II. Inst. 631, says: And in this examination he is judge, and not a minister.

(138). The above are enumerated, Const. 1 Boniface, A.D. 1261.

Churches; and (3) causes involving the validity or invalidity of purely spiritual acts, such as baptism (139), ordination (140), institution (141), resignation (142), and excommunication, either on the ground of such acts being original nullities (143), or of their having been revoked before completion (144).

(139). Decret. Greg. IX. Lib. III. Tit. XLII. c. 3; Const. 3 Peckham, A.D. 1281.

(140). Lynd. 309.

(141). Alexander III. to the English bishops in Decret. Greg. IX. Lib. III. Tit. XXXVIII. c. 12; Const. 11 and 10 Othobon, A.D. 1268.

(142). Lynd. 107, 146. 25 Ed. III. St. III. c. 8, A.D. 1350: Whereas the said prelates have shewed and prayed remedy for that the secular justices do accroach to them cognisance of voidance of benefices, which cognisance and the discussing thereof pertaineth to the judges of Holy Church, and not to the lay judge, the king will and granteth that the said justices shall from henceforth receive such challenges, made or to be made, . . . and, moreover, thereof shall do right and reason. Co. Lit. 344 states that whether a Church be full or not shall be tried by the certificate of the bishop, because plenarty is by institution, which is a spiritual matter; but, whether it be void or not, shall be tried by the county [because ecclesiastical courts had no cognisance over the dead]. Suits concerning the possession of a benefice were brought in the court of the province as ordered by Const. 36 Edmund, A.D. 1236, as appears from an ordainment of Reynolds, A.D. 1322 (in Johnson and Sir H. Spelman, p. 487), directed to the officials of Canterbury. See Rothery's Appeals, 1868.

(143). Gratian Caus. XXV. Qu. II. c. 3 says, to one unwilling to receive grace, a sacrament is a nullity. Lynd. 264: The baptism and ordination of an unwilling subject are nullities. Lynd. 309; Decret. Greg. IX. Lib. III. Tit. XLII. c. 3. Institution is a nullity in the cases mentioned in Const. 10 Othobon, A.D. 1268, or whilst a *duplex querela* is pending. Ayliffe 233, 76: Also confirmation of an election without a previous citation. Ayliffe 241; Sext. Decret. Lib. I. Tit. VI. c. 47, and Lib. IV. Tit. XII. c. 64. Excommunication may be a nullity. Decret. Greg. IX. Lib. II. Tit. XIX. c. 7; Sext. Decr. Lib. V. Tit. XI. c. 2; Lynd. 351, 319, 150, 264, 351. But a nullity is not suspended by an appeal until it is pronounced to be such, Ayliffe 74; nor is everything which ought not to be done a nullity. Lynd. 23: Licet aliquid fieri non debeat, factum tamen tenet, 319; for instance, marriage, *Ibid.* 273, 274; the acts of a notary suspended by sentence of law, Lynd. 16. Elections, collations to prebends, and admission of canons are not void because all parties interested have not been summoned. Ayliffe 16.

(144). By the civil law, acts of gift and other similar acts are revocable

### Spiritual Judges.

26. A spiritual or ecclesiastical judge is one who has lawful authority from the Church to hear and decide spiritual or ecclesiastical causes. There are many varieties of such officers. (1) Some are judges by *divine right.* This is the case of the Church as a body in General Synod assembled; others are of *ecclesiastical appointment,* such as territorial bishops and their officials. (2) Some are *ordinaries,* having by custom and long habit authority to hear and decide cases within the limits defined by custom, such as a metropolitan or his official principal, a bishop or his chancellor; others are *delegates* appointed by an ordinary to deal with some particular matter belonging to his jurisdiction, and to deal with it in a particular way (145). (3) Some are judges of *competent jurisdiction,* having authority from the Church not only to hear and decide, but also to pronounce sentence on the matters coming within their province (146); others are referees and auditors, having only the power to *inquire* and *report,* or else are arbitrators appointed to decide by the sole will of the parties (147). Again (4) some

before they have been acted on. By English law they are not so, but they may be set aside in cases of fraud, compulsion, and the like by action at law, or by the office of the judge. Lynd. p. 163, 332, 107. Until such acts are completed, however, a person may go against his own act in certain cases. Lynd. 150 distinguishes: Either such acts take effect in law, or they do not. (1) If they take effect in law, (*a*) if a mistake has been made, the doer may correct his mistake, and even (*b*) if no mistake has been made, he may revoke them until the effect has actually come about, as in the case of a last will or an interlocutory sentence. (2) If they do not take effect in law, (*a*) a man may impugn his own act as being a nullity, either in the interest of a third party, or in his own interest, provided he do not allege his own wrong-doing; or (*b*) a man may defend himself against his own act as being a *nudum pactum.*

(145). Law's Forms 16.

(146). See above, note 12.

(147). Gratian Caus. II. Qu. VI. c. 33: Ordinary judges are those who are either appointed by the pope as ecclesiastical judges or by the emperor as secular judges. Arbiters are those who, having no authority of their own, are elected to be judges with consent of the parties.

are judges of *first instance*, and are spoken of as judges from whom (*a quibus*), others are judges of appeal, and are called judges to whom (*ad quos*) an appeal lies.

### Judges Ordinary.

27. For any person to be in a position lawfully to hear and determine a cause as judge ordinary, he must be neither (1) naturally disqualified, as by being blind, deaf, or the like; (2) morally disqualified, as by being a woman or a slave; nor (3) legally disqualified, as by having an interest in the case, being an enemy of the accused ([148]), or a person of ill repute ([149]); but there is nothing to prevent a judge being a layman, provided he is an ecclesiastical person ([150]). In early times the judge was required to be approved by the parties ([151]). Hence in North Africa ([152]) and in Southern Europe judges were at one time elected as each case arose ([153]). When, however, the decrees of councils became more numerous, and stricter procedure became requisite in the interests of justice, it was found necessary to have a standing judge or judge ordinary, who was deemed to be generally of competent jurisdiction (1) if he was full twenty-six years of age at the least, (2) was learned in the civil and ecclesiastical laws, (3) had taken the

(148). Socrates I. 31 relates that Athanasius appealed to the Emperor from the Council of Tyre in 335 A.D., because (1) Eusebius and his party who were to judge him were his enemies, and (2) because Ischyras, described as a presbyter in the indictment, was not proved to be one.

(149). Gratian Caus. III. Qu. VII. c. 1.

(150). See notes 16 and 192.

(151). Concil. Chalcedon A.D. 451, Can. 9.

(152). Concil. Milev. A.D. 416, ap. Gratian Caus. VI. Qu. VI. c. 33; Concil. Carthag. III. A.D. 397, Can. 10, *Ibid.* c. 34: If the judges have been elected by consent of the parties. Concil. Carthag. V. A.D. 401, Can. 5, *Ibid.* c. 39: If there is an appeal, let him who appeals choose his judges.

(153). Pseudo-Isidor. ap. Gratian Caus. IV. Qu. IV. c. 1; Caus. V. Qu. IV. c. 2 and Qu. III. c. 1; Caus. III. Qu. VIII. c. 1; Egbert's Excerpt. 141.

oath of office (154), and (4) no exception were taken to him by the parties as a suspect person (155).

28. Although a judge may, by his own qualifications and in relation to the parties, be a judge of competent jurisdiction, yet he may not be competent to hear a particular class of causes (156). This disability may arise from one of three causes. Either (1) the subject-matter may be one with which he is not competent to deal. Thus a spiritual judge may not decide causes which belong to the temporal judge (157), nor a secular judge spiritual causes. (2) The subject-matter may be one which is excepted from his jurisdiction. Thus a bishop cannot judge his clergy in cases which are reserved to the arch-

(154). Can. 127, 1603: No man shall hereafter be admitted a chancellor, commissary, or official to exercise any ecclesiastical jurisdiction except he be of the full age of twenty-six years at the least, and one who is learned in the civil and ecclesiastical laws, and is at the least a master of arts or bachelor of laws, and is reasonably well practised in the cause thereof, as likewise well affected and zealously bent to religion; touching whose life and manners no evil example is had; and except, before he enter into and execute any such office, he shall take the oath, &c.

(155). Gratian Caus. III. Qu. v. c. 15; Ayliffe 310, 452; Devoti Inst. Lib. III. Tit. x. § 8. See note 164.

(156). Pseudo-Isidor. ap. Gratian Caus. XI. Qu. I. c. 48; Innocent IV. in Sext. Decret. Lib. II. Tit. II. c. 1.

(157). Thus Hosius of Cordova addressed the emperor in the fourth century in Hist. Arianorum ad Monachos c. 44: To thee God has given the empire, but to us He has entrusted the Church. And as he who withstands your empire opposes the ordainment of God, so beware that you do not incur crime by drawing to yourself matters which belong to the Church. Gratian I Dist. XC. c. 11: If the emperor is a Catholic, he is the son not the president of the Church, and so far as pertains to religion he ought to learn and not to teach. He has the privileges of his power which he has divinely obtained for administering public laws, so that not ungrateful for these benefits he may usurp to himself nothing against the disposition of divine rule. Concil. Paris A.D. 615, Can. 6 in Decret. Lib. II. Tit. II. c. 2, directs a secular judge to be excommunicated who takes upon himself to judge a clerk for a spiritual matter. Alexander III. *Ibid.* c. 5, lays it down that for a spiritual matter a layman may be summoned by a spiritual court, which the Statute 18 Ed. I. (*Circumspecte agatis*) allows; but *Ibid.* c. 6 directs that a dispute concerning a lay fee belongs to the lord of the fee.

bishop (158). (3) The subject-matter may be one which does not fall within the local limits of his jurisdiction, as if either the parties reside (159), or the offence has been committed (160), or the obligation contracted, or the matter in dispute is situate outside them (161).

29. If a person is cited to appear before a court or a judge which for any of these reasons has no jurisdiction, he may either decline to obey the citation, or he may obey under protest, pointing out that the judge's sentence cannot bind him (162). It is therefore of primary importance that spiritual

(158). See *Penance*, § 6.

(159). Concil. Chalcedon A.D. 451, Can. 9 in Decret. Lib. II. Tit. II. c. 1; Pseudo-Isidor. ap. Gratian Caus. III. Qu. VI. c. 2: One who is accused may not be judged except in his own proper forum. *Id. Ibid.* c. 4: Let not liberty to accuse extend beyond the bounds of the province. *Id. Ibid.* c. 17; Nicolaus *Ibid.* Caus. VI. Qu. III. c. 3: [Bishop Suffred] ought to have awaited the judgment of his primate, and not have invited the judgment of other prelates of the diocese. Also Caus. IX. Qu. III. Innocent III. in Decret. Lib. II. Tit. II. c. 13. Lynd. 27, 84, 199, says that the Church where a person attends service and receives the sacraments is his Church. Const. 3 Mepham. A.D. 1320; Const. Othobon, A.D. 1268.

(160). Concil. Afric. in Decret. Lib. II. Tit. II. c. 3: If the bishops between whom the controversy exists belong to different provinces, let the metropolitan in whose province the place in dispute lies appoint the judges. Pseudo-Isidor. Caus. III. Qu. VI. c. 1 and 18: There let the cause be gone into where the crime is admitted. The statute 23 Hen. VIII. c. 9 in this country forbids any one to be cited out of his diocese except into the archbishop's court. See *Acts in Judgment*, § 11.

(161). Cap. Carlomani ap. Gratian Caus. VI. Qu. III. c. 5: Those who have a benefice or inheritance within a diocese, and are parishioners of another bishop, and commit rapine and depredation, shall be excommunicated where they are. And let their excommunication be signified to their senior and to their proper bishop. Thus exempt monasteries were liable to Church rates for their property within a parish. Const. 4 Stratford, A.D. 1342; Lynd. 255. Const. Chichele, A.D. 1439: We ordain that in causes concerning augmentations rectors be as strictly obliged to appear by virtue of citations publicly and solemnly made in their Churches as if they had been personally served.

(162). Concil. London A.D. 1126, Can. 10: No man is bound by a sentence passed by an improper judge. Alexander III. quoted, note 177. See *Acts in Judgment*, note 87.

causes should be undertaken before the proper judge, or that letters of request (*literae remissoriales*) should be presented by him to the judge who has jurisdiction over the defendant to obtain his co-operation. All ordinary judges within the province are required to assist one another upon request (163), but the usual course in this country in such a case is to take proceedings in the provincial court, which has jurisdiction over both parties.

30. A judge may nevertheless be disqualified to hear and determine a particular case, because he is what is termed a suspect person (164). A judge is held to be a suspect person who is either (1) a close friend (165), or akin, or related to the plaintiff or accuser (166); or (2) the personal enemy of the defendant or accused (167); or (3) has previously given advice upon the case (168); or (4) has an interest in it either directly by having received a gift from either of the parties, which is termed baratry (169), or indirectly by having himself a similar case pending before another

(163). Const. 8 Othobon, A.D. 1268; Const. 3 Islep A.D. 1328; Const. Islep A.D. 1351; Lynd. 81, 90, 303; Law's Forms 89.

(164). Gregory, A.D. 601, in Decret. Lib. II. Tit. II. c. 4; Concil. Lat. IV. A.D. 1215, Can. 35, *Ibid.* Lib. II. Tit. XXVIII. c. 61. Ayliffe 452 enumerates fifteen things which make a judge suspect. See *Acts in Judgment*, note 87.

(165). Nicolaus I. ap. Gratian Caus. IV. Qu. IV. c. 3.

(166). Lucius III. in Decret. Lib. II. Tit. XXVIII. c. 36.

(167). Nicolaus ap. Gratian Caus. III. Qu. V. c. 15. Personal ill-will is assumed if the judge has already attempted to deal extra-judicially with the same matter—Ayliffe 314; Law's Forms 14—or has used threats in matters touching his office. Lynd. 115. See note 148.

(168). Lucius III. in Decret. Lib. II. Tit. XXVIII. c. 36, says, who in the same business has discharged the office of advocate.

(169). Gregory ap. Gratian Caus. XXIII. Qu. IV. c. 27, says that a bishop cannot excommunicate for a wrong done to himself. *Ibid.* Caus. III. Qu. V. c. 15. It was ruled in ex parte *Medwin v. Hurst*, 1853, 1 Ed. and Bla. 609, that the fact of the Chancellor being able to award a bishop his costs should the decision be given in his favour does not give the bishop such an interest in the case as to disqualify his chancellor from hearing it at the suit of the bishop.

tribunal (170); or (5) has shown himself ignorant of the law (171).

31. If exception is taken to the judge on the general ground that he has no jurisdiction to hear and determine the cause, the judge is competent himself to hear and decide the validity of the exception. If, on the other hand, a judge otherwise allowed to be of competent jurisdiction is refused on the ground of being suspect, the party refusing him is required first to state the ground of his objection openly before the judge, and then, unless the adversary assents, for each to nominate one commissioner, and the two commissioners a third, who are thereupon to hear and determine the validity of the suspicion without delay (172). If the suspicion is upheld, either the bishop must appoint a special commissioner (*executor*) to take the judge's place, or, according to the practice of earlier times, some one to compel the parties to agree upon arbiters (173). The refusal to admit an exception of being suspect is a good ground of appeal (174).

32. The duties of an ecclesiastical judge are fourfold: (1) to bring sufficient knowledge to bear on the hearing of a cause (175);

(170). Hieronym. ap. Gratian Caus. I. Qu. 1. c. 23; Cod. IX. c. 4 to 27, *Ibid.* c. 126; Augustin, A.D 414, *Ibid.* Caus. XIV. Qu. v. c. 15; Innocent III. A.D. 1198, in Decret. Lib. III. Tit. I. c. 10; Boniface VIII. in Sext. Lib. I. Tit. III. c. 11; Craisson, § 5563.

(171). Const. 23 Otho, A.D. 1237: Since discretion and knowledge are required in determining matters, all are to take heed that such a judge or hearer of causes be not deputed as may pass an impudent or unjust sentence through simplicity, unskilfulness, or want of knowledge, so that the guilty be acquitted, the innocent condemned. Const. 29 Otho: Let judges who know not the law, if any doubt arise by which damage may happen to either party, ask the advice of some man of knowledge. Thomas Aquin. II. 2, Qu. 66, art. 2: A judge lacking in necessary knowledge ought not to be absolved unless he renounces his office. Lynd 4: Ignorance of matters which any one is required to know by virtue of his office is a sin. *Id.* 80: A judge must have a competent practical knowledge of law.

(172). Concil. Lat. IV. A.D. 1215, *Ibid.* Lib. II. Tit. XXVIII. c. 61.

(173). Gregory, A.D. 601, in Decret. Lib. II. Tit. II. c. 4.

(174). Innocent III. in Decret. Lib. I. Tit. XXIX. c. 27, § 5.

(175). See note 171.

(2) to expedite it without delay ([176]), and without fear or favour ([177]); (3) only to accept as facts what have been before himself ([178]) judicially proved to be such ([179]); and (4) as being the guardian, not the critic of the law, to pass sentence according to the law as it stands ([180]), not as he conceives it

(176). Concil. Ebor. A.D. 1195, Can. 12 ; Concil. Westminster, A.D. 1200, Can. 12 : Let [an inquiry] not be deferred from time to time for the sake of money. Const. 1 Arundel, A.D. 1408 ; Lynd. 29.

(177). Cyprian ap. Gratian III. Dist. IV. c. 127 ; Hieronym. *Ibid.* Caus. I. Qu. 1. c. 23 and 126 : Augustin *Ibid.* Caus. XIV. Qu. V. c. 15 ; Stat. Eccl. Ant. c. 74, *Ibid.* Caus. XXVI. Qu. VII. c. 6 ; Gregory *Ibid.* Caus. II. Qu. VII. c. 46 ; Boniface VIII. in Sext. Lib. I. Tit. III. c. 11 ; and Rule 12, *Ibid.* Lib. V. Tit. XII. c. 5 ; Lynd. 122.

(178). Pseudo-Damasus ap. Gratian Caus. XI. Qu. III. c. 76 : It is not lawful to discuss the causes of those who are accused before they have appeared after being canonically cited before the synod, so that present he may learn from one who is present accurately, and understand what are the charges made against him. Synodus VIII. A.D. 869, *Ibid.* Not only is he guilty who states concerning another what is false, but he who too readily listens to accusations. Alexander III. in Decret. Greg. IX. Lib. II. Tit. I. c. 4 : As a sentence passed by a judge without jurisdiction is not binding, so a confession made before such a judge is of no avail. Gratian Caus. XV. Qu. VI. c. 1 ; Lynd. 113, 308, 312.

(179). Gregory ap. Gratian Caus. XI. Qu. III. c. 74 ; It were grave and unbecoming indeed to give certain sentence in a doubtful matter. Augustinus *Ibid.* c. 75 : Although things may be true, yet no judge must believe them until they are proved by certain evidence. Ethelred's Law 6, A.D. 1014 : Let every man be deemed worthy of common right. Cnut's Law 2 A.D. 1018 : Let him that presides in judgment consider very seriously what he desires of God when he says, Forgive us our trespasses as we forgive them that trespass against us, and that they do not rashly condemn Christian men. Eugenius III. in Decret. Greg. IX. Lib. I. Tit. XXXI. c. 2 : If a priest knows for certain that any one is guilty of a crime, . . . yet ought he not to accuse him of it by name unless he is prepared to prove it judicially, but only indefinitely, as Christ said, One of you shall betray Me. Lynd. 40, 113, 266 ; Const. 13 Stratford, A.D. 1343. See *Discipline Generally*, note 45.

(180). Concil. Aurel. V. A.D. 549, Can. 2 : That no bishop suspend from communion except for those faults for which the ancient fathers decreed such suspension. Cnut's Law 9, A.D. 1019 : Let satisfaction be always sought for towards God by the canon book. Gratian Caus. XXVI. Qu. VII. A fragment attributed to Innocent *Ibid.* 1 Dist. XX. c. 3 : In cases in which no authority for binding or loosing is to be found in the Book of the Old

ought to be (181). If either party in a judicial suit suffers damage through the wrongful neglect of the judge, the latter may be compelled to compensate him for the loss (182), and an action may be maintained to oblige him so to do (183).

Testament, the four Gospels, and the writings of the apostles, refer to the divine writings in Greek (Apocrypha). If no directions are found there, look to the canons of the Apostolic See. If none are there, go to the Catholic histories of the Catholic Church, written by Catholic doctors. If none are there, carefully look over the examples of the saints. Augustin *Ibid.* Caus. XXIV. Qu. 1. c. 21 : Let us not apply treacherous balances, weighing what we wish, how we wish, at our caprice (pro arbitrio nostro), saying : This is grave, that is light ; but let us apply the divine balance from the Holy Scriptures as from the Lord's treasury, and by that let us weigh what is grave, or rather let us not weigh it, but accept what has been weighed by the Lord. And who can doubt that the graver offence was the one more severely punished. Concil. Clovesho A.D. 747, Can. 24, says that it may not exceed it. Also Alexander III. in Decret. Lib. I. Tit. XXIX. c. 4, and Honorius III. *Ibid.* Tit. XXXVI. c. 11.

(181). Innocent III. to Bishop of Ely, A.D. 1204, *Ibid.* Lib. II. Tit. XXII. c. 8 : A judge ought not to proceed by authority of his own law (juris), but of common law. Const. 21 Peckham, A.D. 1281 ; Lynd. 13, 38, 121, 146, 157, 231 ; Ayliffe 349. Lynd. 231 : Punishment is preserved to the authority of the law, and is not left to the president's discretion. Ayliffe 153 says a suit should be decided in pursuance of such laws as existed at the time the suit was commenced. Craisson, § 5566.

(182). Concil. Tolet. XII. A.D. 680, ap. Gratian Caus. XVII. Qu. IV. c. 35, makes a presbyter responsible for wrongfully delivering a fugitive out of sanctuary, or for allowing one to escape whom he ought to deliver. Concil. Lugdun. A.D. 1274, in Sext. Decr. Lib. III. Tit. XIV. c. 1, pronounces a judge who gives a sentence contrary to justice suspended *ipso facto*, and declares him liable to compensate the injured person. In *Beaurain* v. *Scott*, 3 Cowper 388, an action was sustained against a judge for excommunicating where he had no right so to do. In *Davis* v. *Black*, 1 Q. B. 900, Stephens' Eccl. Stat. 226, an action lay against a priest for not marrying parties who requested him to marry them. Innocent III. A.D. 1204, to Bishop of Ely, in Decret. Lib. III. Tit. XXXVIII. c. 29, makes a bishop liable in damages for maliciously refusing a suitable presentee. Lynd. 257. To be wrongful a thing must be done with a wrong intent *culpa interveniente*, as Lynd. 263 and Gratian Caus. XV. Qu. I. c. 3 express it ; but a man does not do wrong who only uses his own right. Mr. Girdlestone, in Ecclesiastical Courts Commission, vol. II. 186, Qu. 4170, mentioned three cases in which he had been put to expense through neglect of a bishop or his officials, but this was in extra-judicial proceedings under a statute.

(183). Lynd. 278.

### Surrogates.

33. Every judge who himself holds an ordinary office as principal (*princeps*) can substitute another to act for him in whole or in part, who is then called a delegate; and every delegate, the terms of whose commission permit him so to do, can appoint a sub-delegate in whole or in part (184), provided the persons thus appointed are properly qualified to act. Delegates and sub-delegates are termed surrogates. When several delegates are appointed to deal with a cause, one or more may act without the rest if the cause is committed to them with authority for one or more to deal with it, or as it is said jointly (*in solidum*) (185); but if the cause is committed to them in common (*simpliciter*), unless those who are absent authorise their co-delegates to act for them, all proceedings taken in their absence are null and void (186). Moreover, whenever the commission is addressed to several in common, the decision must be given by at least a majority of them (187). A delegation may also be made to a corporation sole, in which case if the personal name of the holder is omitted it descends to his successor (188).

34. The general qualifications of a judge-delegate or surrogate are: (1) he must be a man and not a woman (189), full

(184). Alexander III. to Bishop of London in Decret. Lib. I. Tit. XXIX. c. 3; Innocent III. to Bishop of Ely, *Ibid.* c. 28.

(185). Innocent III. *Ibid.* c. 23; Boniface VIII. in Sext. Lib. I. Tit. XIV. c. 8, says, If several are appointed so that all or two or one may carry out the apostolic [*i.e.*, the pope's] command. Ayliffe 424.

(186). Alexander III. to Bishop of Winchester in Decret. Lib. I. Tit. XXIX. c. 6 says that one can sub-delegate his authority to the other. Otherwise, according to *Id.* c. 16, the decision of one will not hold.

(187). Coelestin III. A.D. 1193, *Ibid.* c. 21, says, because the sacred canons provide that a judgment shall be deemed in force (integrum) which is supported by the opinions of many. Innocent III. *Ibid.* c. 22; Craisson, § 5577.

(188). Alexander III. *Ibid.* c. 14.

(189). Isidor. Etym. XVIII. 15 in Decret. Lib. V. Tit. XL. c. 10, requires three things in a witness and a fortiori in a judge, viz., (1) condition, (2) sex, and (3) character. "In respect of condition he must be a free man;

20 years of age (190), and not disqualified by blindness or deafness (191); (2) he must be a baptized person and a member of the spirituality, or at least an ecclesiastical person (192); (3) he must be a free agent (193), and therefore not be of servile condition; (4) he must not himself be under censure (194) or disqualified by ill-repute. He must, moreover, (5) not be suspect by the parties (195). The particular qualifications required by the law of this country are that he must be (6) either a grave minister and a graduate, or a licensed public preacher and a beneficed man, living near the place where the courts are kept, or a bachelor of law, or a master of arts at least; and (7) have some skill in the civil and ecclesiastical law (196).

for a slave often suppresses the truth in giving testimony, for fear of his master. In respect of sex (*natura*) he must be a man, not a woman; for a woman's evidence is always shifty and evasive. In respect of character (*vita*) he must be innocent and upright in action; for if he has lost his character, he ceases to be trustworthy. A thoroughly debased (*sceleratus*) man has lost all sense of justice." Honorius III. in Decret. Lib. I. Tit. XXXIII. c. 12 allows an abbess to act as judge, but Craisson, § 6378, explains the passage otherwise.

(190). Gregory IX. in Decret. Lib. I. Tit. XXIX. c. 41; Craisson, § 313 and 5573.

(191). Canon 128, A.D. 1603: No chancellor, commissary, archdeacon, official, or any other person exercising ecclesiastical jurisdiction, shall at any time substitute in their absence any to keep any court for them, except he be either a grave minister and a graduate, or a licensed public preacher and a beneficed man, near the place where the courts are kept, or a bachelor of law, or a master of arts at least, who hath some skill in the civil and ecclesiastical law, and is a favourer of true religion, and a man of honest and modest conversation.

(192). Eugenius III. in Decret. Lib. II. Tit. I. c. 2.

(193). Gregory IX. in Decret. Lib. V. Tit. XXXIX. c. 54.

(194). Concil. Belvac. 1 ap. Gratian Caus. XXIV. Qu. I. c. 4. According to Gregory IX. in Decret. Lib. V. Tit. I. c. 26, a suspended bishop, if tolerated, can validly but not lawfully excommunicate. If denounced by name he cannot do so validly, because he has ceased to be the representative of the Church, nor can the official of an excommunicated bishop exercise the latter jurisdiction. Concil. Lugdun. A.D. 1245, in Sext. Lib. I. Tit. XIII. c. 1; Ayliffe 18.

(195). Alexander III. to the Bishops of Exeter and Winchester in Decret. Lib. I. Tit. XXIX. c. 17.

(196). Canon 128, A.D. 1603.

35. A judge-delegate can take no action until he has received notice of his commission, since it takes effect not from the date of sealing but of delivery (197), nor can he execute it unless he is in a position to prove that it has issued (198). He may nevertheless begin to execute it by anticipation, (1) if he is a Papal legate whose word the bishop is willing to accept; or (2) if the delegator is present to confirm the fact that it has issued; or (3) if the parties have already contested suit (199).

36. A delegate cannot deal with matters not named in his commission unless they are included in it by implication (200), nor may he cite the parties outside the district for which he is deputed to act (201), but within it he can compel them to appear (202). He can also restrain third parties who would hinder the exercise of his jurisdiction (203); can hear and decide objections raised to his jurisdiction (204); absolve from a sentence of excommunication passed in the cause with which he is dealing, in order to give either party a *locus standi* in judgment (205); can reinstate one dispossessed if the defendant contumaciously fails to appear (206); and a Papal legate can either execute his own sentence, provided he does so within a year (207), or can

(197). Alexander III. in Decret. Lib. II. Tit. XXVIII. c. 12.

(198). Innocent III. in Decret. Lib. I. Tit. XXIX. c. 31.

(199). Lucius III. *Ibid.* c. 19; Craisson, § 5580.

(200). Alexander III. in Decret. Lib. I. Tit. XXIX. c. 5: So soon as the cause is simply delegated to him he is competent to compel the parties to appear, and to visit the contumacious with ecclesiastical severity, even though his commission does not contain those words, . . . because by the fact that the cause is committed to him he receives full authority over all matters which are known to be pertinent to the cause.

(201). Boniface VIII. in Sext. Lib. I. Tit. III. c. 11.

(202). Alexander III. in Decret. Lib. I. Tit. XXIX. c. 4.

(203). Alexander III. to Bishop of London in Decret. Lib. I. Tit. XXIX. c. 1 and 11; Alexander IV. in Sext. Lib. I. Tit. XIV. c. 2; Innocent IV. *Ibid.* c. 1.

(204). Alexander IV. to Archbishop of Canterbury in Decret. Lib. I. Tit. III. c. 2. Schmaltzgrueber ap. Bouix de Jud. I. 157.

(205). Innocent III. *Ibid.* c. 36; Craisson, § 5385.

(206). Alexander III. in Decret. Lib. I. Tit. XXIX. c. 10.

(207). Alexander III. to Bishop of Norwich in Decret. Lib. I. Tit. XXIX. c. 7; Innocent III. *Ibid.* c. 26.

commit it to the bishop ([208]), or even to the secular power for execution ([209]).

37. A delegate's commission terminates (1) by his own death or the death of his co-delegate if the commission is to them in common (*simpliciter*) ([210]), or by the efflux of the time-limit named in the commission ([211]); (2) by the death of his principal, unless he has already taken some step whereby his own jurisdiction is perpetuated ([212]); (3) by the revocation of his commission at any time if it is a commission from a principal, or if from a delegate before the sub-delegate has begun to act upon it ([213]); (4) by the giving of sentence and ordering it for execution ([214]), or the termination of the controversy in some other way; and (5) by the delegate's interlocutory decision that he has no jurisdiction, or that he cannot exercise it because he is suspect ([215]), or by his committing the entirety to a surrogate ([216]). The appeal from a sub-delegate does not lie to the delegate but to the principal, if the delegation has been of the whole cause ([217]). It is otherwise if the delegation has been of a part only ([218]).

(208). Alexander III. *Ibid.* c. 11; Craisson, § 5387.

(209). Concil. Pav. A.D. 877, ap. Gratian Caus. XXIII. Qu. V. c. 26: Let the administrators of secular dignities, . . . whenever approached by bishops and ecclesiastical persons, give heed to their complaints, and as necessity requires diligently examine them and set them right.

(210). Gregory IX. in Decret. Lib. I. Tit. XXIX. c. 42.

(211). Alexander III. *Ibid.* c. 4; Innocent III. *Ibid.* c. 24.

(212). Boniface VIII. in Sext. Lib. I. Tit. XIV. c. 6.

(213). Lucius III. to Archbishop of Canterbury in Decret. Lib. I. Tit. XXIX. c. 19; Urban III. *Ibid.* c. 20; Innocent III. *Ibid.* .c. 30.

(214). Alexander III. *Ibid.* c. 9.

(215). Boniface VIII. in Sext. l. c. c. 5.

(216). Innocent III. A.D. 1208, in Decret. Lib. II. Tit. XX. c. 40, requires him to hand his office over to a surrogate in case he has to give evidence in the cause.

(217). Innocent III. to Archbishop of Canterbury in Decret. Lib. I. Tit. XXIX. c. 27, § 2; Boniface VIII. in Sext. l. c. c. 3.

(218). Alexander III. *Ibid.* c. 18; Boniface VIII. in Sext. l. c. c. 14.

### Plaintiffs and Defendants.

38. Four persons are necessary to constitute a court in every matter of controversy, viz., a lawful judge, a qualified plaintiff or accuser, a defendant, and proper witnesses (219). Of these the three former are accounted principals, witnesses being only necessary in judgment as accessories (220). The person who introduces a controversy in synod or audience, or sets judicial procedure in motion, is termed the plaintiff (*actor*) in a civil cause, in a criminal cause the accuser or promoter of the judge's office. He who is convened in audience, or against whom judicial procedure is set in motion, is termed the defendant (*reus*) in a civil cause (221), in a criminal cause the accused.

39. Not all persons are capable of being plaintiffs or defendants. Some are altogether disqualified in any and every cause; others are disqualified only in a criminal cause. Those who are altogether disqualified are (1) infants, madmen or lunatics; (2) children under fourteen, unless they appear by a curator or next friend (222); and (3) those who have taken a vow of religion, except to make charges against their own abbot (223).

(219). Isidor. Etym. XVIII. 15 in Decret. Lib. v. Tit. XL. c. 10: In every matter of controversy these persons are necessary—a judge, an accuser, a defendant, and three witnesses. Pseudo-Isidor. ap. Gratian Caus. IV. Qu. IV. c. 1; Law's Forms, 61. *Id.* p. 63, observes that sometimes there may be proceedings without a plaintiff, as when a judge of mere office makes inquisition of executors touching a will; or without a defendant, as when a judge makes inquisition of notorious crimes, and denounces, without knowing, who is guilty of them. Eugenius in Decret. Lib. v. Tit. I. c. 9: The manifest appearance of a completed crime requires not the clamour of an accuser. These are, however, properly extra-judicial proceedings. There is no discussion in judgment.

(220). Ayliffe 147.

(221). Isidor. l. c. and Lib. II. Tit. XIX.: *Actor* is so called *ab agendo*, because he acts by invoking the judge; *reus a re* from the matter or thing for the sake of which he is convened.

(222). Boniface VIII. in Sext. Lib. II. Tit. I. c. 3.

(223). Alexander III. to Bishop of Worcester in Decret. Lib. v. Tit. I. c. 11: Monks, because they are under obedience and subjection to the abbot, are not to be repelled from accusing him. Nay, more, since they have no

Women also (4) may not be accusers in criminal causes (224), except to obtain redress for their own wrongs; nor (5) persons excommunicate, unless they are first absolved by the judge (225).

40. No one can be compelled to act as plaintiff or accuser against his will unless (1) he has promoted the judge's office, when in the interest of the accused he may be compelled to go on; or (2) unless he has slandered another, when he can be compelled to prove his words; or (3) unless he is appointed tutor, curator, or proctor, and his client's interest requires him to act. But every one who is cited can be compelled to appear as defendant, or in default the cause may be adjudicated upon as though he were present (226). Personal appearance is, however, not necessary to avoid contumacy. It is sufficient to appear by a proctor, but not in a criminal cause until after the matter has been judicially contested (227).

property of their own, necessary expenses must be allowed them from the property of the monastery.

(224). Boniface VIII. in Sext. l. c. 2.

(225). One who is excommunicate and denounced as such may not be plaintiff or accuser, according to Gregory IX. in Decret. Lib. II. Tit. XXV. c. 12, unless it be to prove that his excommunication is *ipso jure* a nullity, not merely that it is unjust, according to Bouix de Judic. I. 174. One who is not denounced may be a plaintiff, but exception may be taken to him by the defendant, when the judge must determine whether to receive him or not. In *Mastin* v. *Escott*, 2 Curt. 692, 4 Moore P.C. 104; 1 Notes of cases 552, and 3 Notes of cases 387, the Privy Council allowed one excommunicate by sentence to be a promoter in a criminal cause. Excommunicates who are denounced can, however, be defendants according to Alexander III. in Decret. Lib. II. Tit. I. c. 7. Conf. Lib. I. Tit. XXVIII. c. 15.

(226). Apost. Can. 74: If the accused refuses to appear, let the synod pass what sentence they please against him, that he may not appear to gain advantage by avoiding their judgment.

(227). Pseudo-Isidor. quoting the rule of Civil Law ap Gratian Caus. II. Qu. VI. c. 40: If an appeal is made in a capital cause, it may not be conducted by proctors but in person. *Ibid.* Qu. VIII. c. 5: Let no accuser's evidence be received in writing, but from his own lips, in presence of the accused, because no absent person can either accuse or be accused. Caus. V. Qu. III. c. 2 & 3. Innocent III. in Decret. Lib. V. Tit. I. c. 15: We cannot receive the proctors [of the accused] in a criminal cause. *Id. Ibid.* Lib. I.

## Proctors and Advocates.

41. A proctor ([228]), formerly called an answerable person (*responsalis*) ([229]), is one who stands in the place of his principal, having been properly appointed by the principal to act for him ([230]). A proctor may be either (1) general ([231]) or (2) special ([232]); but in either case he must be properly appointed, or he cannot be admitted in the mandatory's name ([233]). A general proctor can undertake and transact all matters (*negotia*), both judicial and extra-judicial, except those which require a special mandate. A special proctor can only represent his principal in the particular business he is empowered to transact, and such is

Tit. xxxviii. c. 5, says that the accuser cannot appear by proctor in a criminal cause, because he has to make an inscription. Ayliffe 424 observes that the defendant must appear personally to answer for a crime, because an absent person cannot be punished corporally; but if the proceedings are only criminal in form, the object being to get him to pay money, he may appear by a proctor.

(228). See Decret. Lib. i. Tit. xxxviii. and Sext. Lib. i. Tit. xix. *de Procuratoribus.* In the Report of the Ecclesiastical Commissioners, 1832, it is said: "Proctors in the ecclesiastical and Admiralty courts discharge duties similar to those of solicitors and attorneys in other courts." According to 2 Dom. 583, Proctors are officers established to represent in judgment the parties who empower them (by warrant under their hands called a *proxy*) to appear for them. 33 & 34 Vict. c. 27 imposes a stamp duty of £25 on admission to office. 53 Geo. iii. c. 127 forbids proctors to allow their names to be used by unqualified persons. 10 Geo. iv. c. 7, sec. 16, forbids Roman Catholics from acting as proctors. 33 & 34 Vict. c. 28, sec. 20, enables attorneys or solicitors "to perform all such acts as appertain solely to the office of a proctor in any ecclesiastical court other than the provincial courts of the Archbishops of Canterbury and of York, and the diocesan court of the Bishop of London.

(229). Gregory ap. Gratian Caus. v. Qu. l. c. 2; Alexander iii. in Decret. Lib. ii. Tit. xxviii. c. 7, and Tit. xiii. c. 7; Innocent iii. a.d. 1203, *Ibid.* Lib. i. Tit. vi. c. 22, and Lib. v. Tit. iii. c. 12, and Lib. ii. Tit. xx. c. 34.

(230). Cicero pro A. Caecina c. 20 calls him alieni juris vicarius.

(231). Boniface viii. in Sext. Decr. Lib. i. Tit. xix. c. 5.

(232). Boniface viii. *Ibid.* c. 9 states that a special proxy is necessary for entering into a marriage-contract; Lynd. 273 says for resigning a benefice. Lynd. 107.

(233). Decret. Lib. i. Tit. xxxviii. c. 1.

a judicial proctor. Every proctor is strictly bound by the terms of his mandate (234), whether it be simple or plenary. If he acts contrary thereto in a judicial proceeding, the matter may be appealed against, even after a year (235).

42. Proctors may also be divided into (1) judicial and (2) extra-judicial proctors (236). A judicial proctor is one who represents another judicially in a suit (*ad lites*), an extra-judicial proctor one who represents him in business matters (*ad negotia*). A business proctor may make answer in court for his principal, except in a case requiring a special mandate (237); but he cannot take an oath, or compound or withdraw from a suit on his behalf, unless he has been entrusted with full administration of effects and causes (238).

43. A judicial proctor may be appointed either (1) before the judge in court (*apud acta curiae*), or alternatively (2) by an instrument called a mandate or proxy (239), which requires to be attested before two witnesses (240) and to be either drawn or executed before a notary or authentic person (241). It must also be, at least tacitly, accepted by the person named (242). Canons and clergy,

(234). Innocent III. to the bishop, dean, and precentor of Hereford in Decret. Lib. II. Tit. XXVIII. c. 48. Concil. Vien. in Sext. Lib. I. Tit. X. c. 3; Clem. Lib. I. Tit. X.; Ayliffe 426.

(235). Honorius III. in Decret. Lib. II. Tit. XXVIII. c. 69.

(236). Boniface VIII. in Sext. Lib. I. Tit. X. c. 5; Ayliffe 150, 421.

(237). Boniface VIII. *Ibid.*

(238). Boniface VIII. *Ibid.* c. 4.

(239). Innocent III. in Decret. Lib. I. Tit. XXVIII. c. 4; Const. 25 Otho, A.D. 1237. Can. 129, A.D. 1603: None shall procure in any cause whatsoever unless he be thereunto constituted and appointed by the party himself, either before the judge and by act of court, or unless in the beginning of the suit he be by a true and sufficient proxy thereunto warranted and enabled. We call that proxy sufficient which is strengthened and confirmed by some authentical seal, the party's approbation, or at least his ratification therewithal concurring. Ayliffe 421; Law's Forms 32 and 122.

(240). Gregory IX. in Decret. Lib. I. Tit. XXXVIII. c. 1; Law's Forms 32.

(241). Law's Forms 32, 101.

(242). Boniface VIII. in Sext. Lib. I. Tit. XL. c. 7; Concil. Vien. A.D. 1311, in Clem. Lib. I. Tit. X. c. 1 says that a proctor who receives a proxy without protestation can be compelled to defend the client.

however, do not require such an authority to appear for their own Churches (243).

44. As the proctor is bound by the terms of his mandate, so on the other hand the mandatory is bound by the acts of his proctor (244), unless indeed the mandate was obtained by undue influence (245). If therefore the proctor omits anything which the mandatory ought to have done, the latter is thereby prejudiced (246); but if he omits to do anything which as proctor he ought to have done, the mandatory, although still bound by the consequences, has a remedy against the proctor if the negligence was his fault. Except in a criminal case, a proctor may appoint a substitute before contestation of suit with the mandatory's sanction (247); and in all causes he may do so of his own authority after contestation (248). The substitute appointed by the proctor ceases to hold office if the proctor who appointed him dies, whereas the substitute appointed by the mandatory continues.

45. Several proctors may be constituted simultaneously, either in common (*simpliciter*) or jointly (*in solidum*). If appointed to act in common, all must concur, except in cases of election, postulation, provision, and other ecclesiastical matters requiring prompt decision, when the judge can call upon the one who is best qualified to go through with the matter (249). If they are constituted jointly, either can act without the other,

(243). Syn. Rom. A.D. 502, in Decret. Lib. III. Tit. XIII. c. 6; Gregory IX. *Ibid.* Lib. II. Tit. XIII. c. 1.

(244). Gregory IX. in Decret. Lib. I. Tit. XXXVIII. c. 13.

(245). Gregory IX. *Ibid.* c. 10.

(246). Alexander III. to Bishop of Durham, Lib. I. Tit. XXXVI. c. 3, says that the chapter is not bound by a composition effected by the abbot or prior as proctor on its behalf.

(247). Boniface VIII. in Sext. Lib. I. Tit. XL. c. 1. It is, however, stated in Law's Forms, 113, to be doubtful whether in a cause of correction a voluntary promoter can appoint a judicial proctor before contestation of suit. The reason seems to be because the accused may submit to summary correction, and the matter never come into judgment.

(248). Ayliffe 422.

(249). Boniface VIII. in Sext. Lib. I. Tit. X. c. 6, § 2.

but preference is given to him who acts first (250), and after contestation of suit the other cannot intermeddle, because the first one has become lord of the suit. The appointment of a fresh proctor by a subsequent instrument acts as a revocation of any former mandate (251). A principal is not responsible, however, for his proctor's wrong-doing (252).

46. Any person, either clerk or layman (253), may be constituted a proctor, except those who are expressly forbidden to act as such, viz. (1) excommunicates (254) who cannot even appear on their own account (255); (2) persons under the age of twenty-five (256); (3) infamous persons, *i.e.*, persons found guilty of crime on impeachment (257); (4) women, because of the modesty of their sex (258); (5) soldiers, because of their military exercises and duties (259); (6) all who occupy such a high station in life that their appearance would prejudice the court against the adverse party (260); (7) those who buy up the interest in lawsuits, called *litium redemptores* (261); and (8) by English law justices of the peace (262). Monks and regular canons may not act, except on behalf of their own monasteries (263), or other-

(250). Gregory IX. in Decret. Lib. I. Tit. XXXVIII. c. 14.

(251). Gregory IX. *Ibid.*

(252). Lynd. 115.

(253). Boniface VIII. in Sext. Lib. I. Tit. X. c. 1.

(254). Concil. Lat. IV. A.D. 1215, Can. 3 in Decret. Lib. V. Tit. VII. c. 13, § 5; Innocent III. *Ibid.* Lib. II. Tit. XIX. c. 7; Concil. Lugdun. II. A.D. 1274, in Sext. Lib. II. Tit. XII. c. 1.

(255). Alexander III. in Decret. Lib. II. Tit. I. c. 7.

(256). Boniface VIII. in Sext. Lib. I. Tit. X. c. 5: Although any one may be lawfully appointed a business proctor after he is seventeen, yet no one may be appointed a judicial proctor who is not over twenty-five.

(257). Gratian Caus. III. Qu. VII. c. 1 and 2.

(258). *Ibid.*

(259). Law's Forms, p. 29.

(260). Ayliffe 423, 55.

(261). Law's Forms, p. 29.

(262). Stat. 5 Geo. II. c. 18, sec. 2.

(263). Gregory in Decret. Lib. I. Tit. XXXIX. c. 1; Concil. Turon. A.D. 1163; *Ibid.* Lib. III. Tit. L. c. 3; Concil. Vien. A.D. 1311, in Clem. Lib. I. Tit. X. c. 3.

wise for defendants, and then not without a dispensation (264); nor bishops and presbyters (265), except on behalf of their Churches, or of widows, orphans, and such as have no other helper (266); but clergy in minor orders may (267), unless either (1) they hold an ecclesiastical benefice, or (2) are asked to appear against their own Churches, or (3) if it is a cause which may involve bloodshed.

47. Proctors may be constituted in all judicial causes, not excepting criminal causes provided they are prosecuted in civil form (268), but they cannot appear for either plaintiff or defendant in a criminal suit voluntarily promoted (269) until after contestation of suit. A plaintiff or defendant may either appear in person or employ a proctor in his discretion, but corporate bodies can only appear in judgment by a special kind of proctor, called a syndic (270) or steward

(264). Gelasius, A.D. 494, ap. Gratian Caus. XVI. Qu. 1. c. 20.

(265). Concil. Carthag. III. A.D. 397, Can. 15: That neither bishops, presbyters, deacons, nor clergy act as proctors [sc., before secular judges]. Eugenius III. in Decret. Lib. III. Tit. L. c. 2; Concil. Lat. III. A.D. 1179. Can. 12, *Ibid.* c. 4, and Lib. I. Tit. XXXVII. c. 1.

(266). Concil. Mogunt. A.D. 813, in Decret. Lib. III. Tit. L. c. 1; Concil, Lat. III. A.D. 1179, Can. 12; *Ibid.* Lib. I. Tit. XXXIX. c. 1. It must be remembered that in the Roman Empire, Justinian (see Cod. Justin. Lib. I. Tit. IV. de Episcopali Audientia) had entrusted to bishops the care of prisoners, minors, insane persons, foundlings, stolen children, and oppressed women.

(267). Gregory IX. in Decret. Lib. I. Tit. XXXVII. c. 3; Craisson, § 5622.

(268). Innocent III. A.D. 1206, in Decret. Lib. I. Tit. XXXVIII. c. 5, says that although a man who charges his wife with adultery before a secular judge, in order that she may receive vindictive punishment, must appear in person, yet if he makes the same charge before a spiritual judge, in order that separation from her may be decreed, he may appear by a proctor, because it is not a criminal suit, but partakes of the nature of both (*mixta inter civilem et criminalem*). *Id. Ibid.* Lib. V. Tit. I. c. 16, A.D. 1202, says that he may appear by a proctor in a case of denunciation, because denunciation is undertaken for correction, not for vengeance. Concil. Lugdun. A.D. 1245, in Sext. Lib. II. Tit. I. c. 1; Ayliffe 424.

(269). Pseudo-Isidor. ap. Gratian Caus. V. Qu. III. c. 2. See notes 268 and 247. Craisson, § 5626; Ayliffe 254.

(270). Gregory in Decret. Lib. I. Tit. XXXIX. c. 1; Innocent III. *Ibid.*

(*oeconomus*) (271), elected by the whole body, who when elected is deemed, like a vicar-capitular, to hold a public office. He, therefore, can alone take the oath against vexatious litigation on their behalf, whereas, in other cases, the oath may be tendered indiscriminately to either the proctor or the mandatory (272). The syndic of a town is generally called *actor universitatis* (273).

48. After the proctor has become master of the suit (*dominus litis*) by contestation (274), he can substitute another in his place (275), and his proxy can then only be withdrawn for some good cause (276), by informing the judge and his opponent of the change (277). All steps, nevertheless, taken in the cause until the judge becomes aware of the revocation hold good (278). A proctor's office may be determined (1) before contestation of suit by mutual agreement, the revocation of the mandate, the substitution of another proctor (279), or the death of the mandatory (280); (2) after contestation of suit by the conclusion of the cause or by appeal (281), by the death of the proctor, or in a

Lib. I. Tit. XLI. c. 2, and Tit. XXXVIII. c. 7; Gregory IX. *Ibid.* c. 15; Law's Forms, pp. 95, 190, 191.

(271). Eugenius III. in Decret. Lib. II. Tit. VII. c. 4.

(272). *Id. Ibid.* c. 3.

(273). Ayliffe 428.

(274). Boniface VIII. in Sext Lib. I. Tit. X. c. 2; Ayliffe 421; Law's Forms 28, 82, 160.

(275). *Id. Ibid.* c. 1; Law's Forms 35.

(276). *Id. Ibid.* c. 2.

(277). Innocent III. A.D. 1206, in Decret. Lib. I. Tit. XXXVIII. c. 4.

(278). Gregory IX. *Ibid.* c. 13: If a proctor's mandate is revoked after contestation of suit, and this has been done unbeknown to the judge or the opposite party, the judgment which the reputed proctor has subsequently obtained shall hold good.

(279). Clemens III. *Ibid.* c. 3; Innocent III. *Ibid.* c. 4; Gregory IX. *Ibid.* c. 16; Boniface VIII. in Sext. Lib. I. Tit. XIX. c. 2; Ayliffe 428; Law's Forms 36.

(280). By Roman law the death of the mandatory did not terminate the proctor's power to carry on the suit if it had been contested. Concil. Vien. A.D. 1311, in Clem. Lib. I. Tit. X. c. 4, altered the law. Law's Forms 37.

(281). Law's Forms, p. 37; but *Id.* p. 39 states that his proctorship is only placed in abeyance by an interlocutory appeal.

personal action of the mandatory (282), or by the mandatory intervening and conducting his own cause in person (283), unless he is careful to protest that his intervention is without prejudice to his proctor's proxy (284).

49. A proctor differs from a curator or next friend (285), because a curator is appointed by the court, and a proctor is constituted by the suitor. He differs also from an advocate or patron, because he conducts a case, whereas an advocate only advises upon it, and speaks to the merits of it in court (286). Hence a proctor can take an oath on behalf of his client (287), whereas an advocate cannot. Any person may, moreover, act as proctor, but an advocate must be a person learned in the canon and civil law (288); and since no one except a bishop or abbot may by English rule speak in a synodical court without the metropolitan's permission (289), an advocate can only be admitted to practice in the provincial court by license from him, or by the bishop's license in a diocesan court (290).

50. An advocate, sometimes called a defensor (291) or

(282). Law's Forms, p. 39.

(283). Boniface VIII. in Sext. Lib. I. Tit. XIX. c. 8.

(284). *Id. Ibid.* Law's Forms, p. 243.

(285). Gratian Caus. III. Qu. VII. c. 2.

(286). A person is said to be client to an advocate, but master and mandator to a proctor.

(287). Eugenius III. in Decret. Lib. II. Tit. XX. c. 3.

(288). According to the Report of the Ecclesiastical Commissioners, 1832: "No person can be admitted a member, or allowed to practise as an advocate in the courts at Doctors' Commons, without having first taken the degree of Doctor of Laws in one of the English Universities." The Stat. 3 and 4 Vict. c. 86, § 7, requires that in criminal proceedings instituted against a clergyman the articles drawn up against him must be signed by an advocate practising in Doctors' Commons. But the College of Advocates having been abolished in 1857, the duties of advocate are now usually discharged by barristers. Ayliffe 53.

(289). Concil. London A.D. 1075, Can. 5. See Ecclesiastical Courts Commission, 1883, vol. II. p. 371. Craisson, § 5644, states that this is a local and not a general rule.

(290). Const. 25 Othobon, A.D. 1268: Let no advocate be allowed to undertake a cause unless he first show the letters of the diocesan.

(291). Ayliffe 421.

patron (292), is a person learned in the civil and canon law, who gives advice upon a controversy out of court, and speaks to its merits in judgment. His duties are fourfold: (1) to bring sufficient knowledge to bear upon the cause; (2) not to prevent or delay justice by suggesting what is false or suppressing what is true (293), and therefore not to undertake a cause which he knows to be bad, though he may always defend the accused in a criminal cause (294); (3) not to disclose his client's affairs to his opponent (295); and (4) not to take more than a fair fee for his assistance (296).

51. No person may act as advocate until he is seventeen years of age (297), and has been first a diligent hearer of the civil and canon law for three years at least (298), or five years if he proposes to practise in the provincial court (299). This he may be required to prove by his own corporal oath, if the same does not appear either by a testimonial from the professor under whom he has studied, or else by evidence of the fact, *i.e.*, by submitting to examination. In this country a doctor's degree is, however, usually considered sufficient. He must also neither be deaf nor blind (300). A woman cannot act as advocate except on her own behalf or on behalf of her infant child (301). Persons who are infamous, or branded with any note of infamy,

(292). Gratian Caus. III. Qu. VII. c. 2; Const. 29 Otho, A.D. 1237; Law's Forms 24.

(293). Const. 29 Otho, A.D. 1237, requires an advocate to make oath that in the causes which he undertakes he will perform the part of a faithful patron. Const. 26 Othobon, A.D. 1268; Law's Forms 24, 27.

(294). Liguori Lib. IV. n. 223 says, because even a guilty man need not be publicly punished unless he can be convicted.

(295). Const. 29 Otho, A.D. 1237.

(296). Law's Forms 26, 27; Gregory in Decret. Lib. I. Tit. XXXIX. c. 1; Eugenius, *Ibid.* Lib. II. Tit. XX. c. 4, speak of the fixed salary of a syndic or oeconomus.

(297). Craisson, § 5643; Cardinal Soglia Inst. Jur. Priv. § 207, puts the minimum age at seventeen. Law's Forms 25.

(298). Const. 25 Peckham, A.D. 1281; Law's Forms 24.

(299). Lynd. 74, 76; Law's Forms 23.

(300). Law's Forms 25.

(301). Gregory IX. in Decret. Lib. II. Tit. XXVIII. c. 67.

or condemned of calumny in any public court of judicature, and persons convicted of any capital crime, are *ipso jure* forbidden to be advocates either for themselves or others (302). The same disqualification applies to those who are excommunicated, who can only themselves appear by deputy (303), and to clergy in a cause of blood (304). Bishops, presbyters, and monks may act for their own Churches or for brother-clergy in the cases in which they might act as proctors, but not otherwise (305); and even clergy in minor orders are forbidden to plead before a temporal judge unless they are either prosecuting their own causes or that of their Churches, or acting for those who are too poor to have other assistance (306).

(302). 3 Jac. c. 5, § 8, A.D. 1605; Law's Forms 25.

(303). Alexander IV. in Sext. Lib. v. Tit. XI. c. 8; Alexander III. in Decret. Lib. II. Tit. I. c. 7.

(304). Gratian Caus. XXIII. Qu. VIII. c. 30.

(305). Can. 30 Elfric, A.D. 957: Let no priest plead causes.

(306). Law's Forms 25.

# VII.

# CANONICAL PROCEDURE.

## Spiritual Causes.

1. All proceedings in disciplinary matters, and all disputes, when they are propounded for settlement by judicial process, are termed causes (1), and may be broadly divided into two classes — (1) criminal and (2) civil (2). Criminal causes are those concerned with the administration of discipline, civil causes with the settlement of disputes. Some causes, again, concern spiritual matters, and others temporal matters. They may therefore be crossly divided into (1) spiritual causes and (2) temporal causes. Those which partake of the nature of both are termed (3) mixed causes (3).

2. Any excess against faith, discipline, or morals, which calls for accusation and punishment, is in view of the Church a crime, and any proceeding primarily instituted to punish such excess is a criminal cause. Any dispute between Christians as to the validity of an ecclesiastical act, or as to the rights or duties of one person towards another, is termed a civil cause (4).

3. Civil causes include (5)—(1) causes merely civil, (2) civil causes which involve private crime, and (3) civil causes which involve public crime. Criminal causes include (1) causes merely criminal, and (2) those called popular causes, in which crime concerns the public interest of the Church, such as benefice causes. Nearly all civil causes are now dealt with by secular courts, excepting those relating to clerical stipends and

(1). Ayliffe 147. See *Acts in Judgment*, § 1.
(2). Lynd. 73.
(3). Eccles. Courts Commission, 1883, vol. II. 320, note A.
(4). Lynd. 162 Eccles. Courts Commission, 1883, vol. II. 218.
(5). Lynd. 73.

faculty seats. Popular causes are the only ones which by recent legislation are allowed in this country to be instituted for the sake of the penalty (6); all others are only permitted to be conducted in a spiritual court for the soul's health (7).

4. A spiritual cause is one concerned with matters merely spiritual, such as faith, the sacraments, divine worship, whether the procedure be civil or criminal. A mixed cause is one concerning a spiritual matter which carries with it temporal rights (8), or one which is partly spiritual, partly temporal. A temporal cause is one concerning a temporal matter (9). It is not always easy to distinguish between spiritual and mixed causes in practice, since nearly every spiritual act has some effect upon temporal position in the circumstances of modern life (10).

5. A temporal cause does not cease to be temporal although spiritual accidents may be annexed thereto. Thus the right of advowson or presentation to a foundation-endowment is a matter of temporal right, although the exercise of it bestows upon the presentee a right to be admitted to a spiritual office. On the other hand, although temporal courts may decide who is entitled to exercise the right of presentation, it is for the spiritual judge to determine whether the right has been exercised in a manner agreeable to the spiritual law, or, as it is

(6). Thus, although the statute 27 Geo. III. c. 44 forbad any suit to be brought in an ecclesiastical court for incontinence after eight months had elapsed, for the soul's health, yet it was ruled by the House of Lords that this did not prevent the ordinary from purging the Church of an incontinent clerk within two years, or by 55 and 56 Vict. c. 32, within five years.

(7). 13 Ed. I. St. IV. c. 1, A.D. 1285.

(8). Innocent III. in Decret. Lib. I. Tit. XXXVIII. c. 5.

(9). Phillipps Ch. IX. §. 10, p. 397, defines a spiritual cause as one the object of which is principally spiritual.

(10). Benedict XIV. de Syn. Dioec. Lib. IX. c. 9, no. 2 and 12; Suarez de Leg. Lib. IV. c. 11, no. 9; Craisson, § 264. A very different division is given by the Attorney-General of the Isle of Man in Eccles. Courts Commission, 1883, vol. II. p. 329.

said, in favour of a fit person (11). Causes concerning covenant, quasi or constructive covenant usually called trust, trespass, and quasi or constructive trespass (12), although now regarded as exclusively temporal causes, were before the twelfth century (13) treated as spiritual causes, because each of them involved a breach of faith; and they are still spiritual causes in the inner forum.

6. According to the custom of the civil law, causes may be otherwise divided into (1) possessory causes, *i.e.*, causes which concern possession, and (2) proprietory causes, *i.e.*, causes which concern property rights (14); into (1) real causes, *i.e.*, causes which have to do with things, and (2) personal causes, which have to do with persons (15); or, again, into (1) simple causes, in which one is plaintiff and the other defendant, and (2) double

(11). 9 Ed. II. St. I. c. 13, A.D. 1315, acknowledges that the bishop may refuse admission on canonical grounds, of which he is the judge, but he cannot refuse admission on the ground that the presentor has not the patronage.

(12). Quasi-covenant is when a man takes care of the goods of an absent friend, or of the estate of a minor, in which case, though there is no real agreement, the law supposes one. Quasi-trespass (delictum or maleficium) is when a man hires or borrows a horse, and rides it further or keeps it longer than he engaged to do. These four cases are mentioned in Const. 1 Boniface, A.D. 1261; Lynd. 162 and 316.

(13). Const. 5 Clarendon, A.D. 1164, requires persons to be absolved on giving security that they would stand to the judgment of the Church. If the Church afterwards proceeded to inquire into matters held to be of temporal cognisance, prohibition issued. Innocent III. in Decret. Lib. II. Tit. I. c. 13. See *Spiritual Courts*, note 90, and Eccles. Courts Commission Report, 1883, p. XXII.

(14). Gregory I. in Decret. Lib. II. Tit. XII. c. 1 calls them *causae possessionis et proprietatis.* Innocent III. *Ibid.* c. 3, *judicium possessorium et petitorium.* Lynd. 146 distinguishes possession of a benefice from property in a benefice. Benedict XIV. de Syn. Dioc. Lib. IX. Tit. 9, § 7, says, by custom secular courts may determine possessory, and spiritual courts proprietory rights in benefice cases. Devoti Lib. III. Tit. II. § 6; Law's Forms 41.

(15). Ayliffe 152: In a personal action the proximate cause is the obligation, and the remote cause is the contract. . . . In a real action the proximate cause is the ownership, and the remote cause is the fact whereby such ownership is caused. Devoti Lib. III. Tit. II. § 8.

causes, in which the defendant makes a counter-claim, so that each party is at once plaintiff and defendant (16).

### Various Modes of Procedure.

7. A cause may be introduced for judicial settlement in one of four different ways, viz. (1) by action, (2) by accusation, (3) by denunciation, or (4) by inquisition (17). The first of these actions applies to civil matters, and is the pursuing in a court of competent jurisdiction whatever any one supposes to be properly his due (18). It is therefore said to be taken at the instance of a party. The three others are modes of proceeding to enforce the discipline of the Church; and since correction or punishment is the judge's office, in them the judge's office is said to be brought into exercise or promoted (19). Actions are accordingly called causes of *instance;* proceedings by accusation, denunciation, or inquisition causes of *office* (20). To these modes of procedure a fifth is sometimes added, viz., exception; but this is only a privileged form of accusation allowed to a defendant for self-protection in judgment (21).

8. Causes of office may again be instituted in one of two ways, viz., either (1) by a prelate or officer of the Church of his own motion to enforce discipline, when they are said to be instituted by the *mere office* of the judge, or as the civilians say, by the *noble* office of the judge; or (2) at the instance of a private person, when they are said to be instituted by the

(16). Devoti Lib. III. Tit. II. § 8, whence the term *Duplex querela* is applied to an action to obtain institution to a benefice.

(17). Innocent III. A.D. 1199, in Decret. Lib. V. Tit. III. c. 31; Concil. Lat. IV. A.D. 1215, Can. 8, *Ibid.* Tit. I. c. 24; Ayliffe 152.

(18). Law's Forms 41; Ayliffe 152, 398.

(19). *Ibid.* p. 356; Ecclesiastical Courts Commission, 1883, p. 182, and vol. II. 207.

(20). Innocent III. l. c. and Concil. Lat. IV. A.D. 1215, Can. 8, mention these three modes. Ayliffe 22, 153, 210; Law's Forms 356.

(21). Innocent III. A.D. 1202, in Decret. Lib. V. Tit. I. c. 16: Crime may be objected [by a private individual] in three ways—[1] by way of presentment, [2] by way of exception, and [3] by accusation. See *Acts in Judgment*, § 29.

judge's *promoted office*, or as the civilians say, by the judge's *mercenary* office (22). They may also be instituted on account of some breach of discipline or crime actually committed, or on suspicion of some crime which it is in the interest of the Church to clear up and dispose of. As a matter of form the office of the judge is promoted (23) both when he proceeds of mere office or when he proceeds of his promoted office, at least if the proceeding takes place in judgment; but in a cause of mere office some public person or official takes upon himself to promote his office, who is then called a *necessary promoter*, whereas in a cause of promoted office the private accuser who promotes his office is called a *voluntary promoter* (24).

9. Causes of instance may again be either (1) *summary* or (2) *plenary*. Summary causes are of two kinds, though the distinction has practically become obsolete in this country. Some are summary in the sense that the parties proceed in them without the noise of judicial wrangling (*absque strepitu judicii*), the observance of technical forms (*de simplici*), and the occupation of the seat of judgment by the judge (*de plano*) (25). Such causes might be better called extra-judicial or extra-ordinary causes, because the judge does not act in them as a judge hearing a discussion in judgment, but as a representative of the Church deciding a matter in synod or audience; and such causes a prelate or judge may hear and decide anywhere. Others in which the judge does act as judge, and occupies the seat of judgment, are really judicial causes, but owing to the absence of the criminal element he is authorised to act with a shortened procedure, as in proving wills and administrations.

(22). Ayliffe, p. 397; Law's Forms 357.

(23). In the former case the cause is described as: The office of the judge against A. B.; in the latter as: The office of the judge promoted by C. D. against A. B.

(24). Law's Forms, p. 112. In France the necessary promoter is called *promotor fiscalis*, because he is paid from the fiscus of the Church, or simply *fiscalis*. See Craisson, § 5767, 5929.

(25). *Ibid.* p. 42; Craisson, § 5486, observes that this distinction which the civil law kept up is now disregarded. § 5882 calls them *judicia extraordinaria*.

In these there is no contestation of suit, nor any term assigned to propound acts or to conclude ([26]), but some forms are nevertheless observed.

10. Plenary causes are those in which all the solemnities of procedure are observed which the wisdom of the Church has devised or adopted as safeguards against fraud, surprise, or injustice in judgment, such as a regular contestation of suit, a proper interval to propound acts, and a term assigned to conclude ([27]). All causes formerly dealt with in the Prerogative Court concerning wills and administrations, causes of contempt, and disciplinary causes, in which the judge proceeds of mere office upon notorious facts, are summary ([28]). All causes of correction, on the other hand, and all temporal causes in which facts are in dispute requiring discussion in judgment, are plenary ([29]). If in a plenary cause any one proceeds sum-

(26). Clemens v. in Clem. Lib. v. Tit. xi. c. 2 : It often happens that we commit causes, and in some of them direct that they should be heard *simpliciter* et *de plano ac sine strepitu* et *figura judicii*, as to the meaning of which words opinions differ, and doubts are felt how to proceed. To do away with such doubts, we enjoin by this perpetual constitution that a judge to whom we commit a cause in the manner aforesaid need not necessarily demand a libel nor require contestation of suit ; he may also proceed on ferial days because of necessities allowed by law, and strike out all matter causing delays, and shorten the suit as far as possible by refusing the dilatory and frustratory exceptions and appeals of the parties, by checking the wranglings and disputes of advocates and proctors, and the superfluous multitude of witnesses. Still he may not so shorten the suit as to exclude necessary proofs and lawful defences (defensiones). But we do not understand that a commission of this kind dispenses with a citation, or with taking the oath of calumny or malice, or the oath of truth. Since, however, the declaration must accord with the form of the petition, a petition must be made at the very beginning of the suit, either on the part of the plaintiff or of the defendant, if he wishes to make one, either in writing or by word of mouth, and [such petition must] forthwith be inserted in the acts. Concil. Lat. iv. A.D. 1215, in Decret. Lib. v. Tit. i. c. 25, orders this mode of procedure in visitation. Ayliffe 151 ; Law's Forms 41, 357.

(27). Law's Forms, p. 357.

(28). Law's Forms, p. 42, 55, 59. See *Acts in Judgment*, § 3 ; Ecclesiastical Courts Commission, 1883, Hist. App. i. 197.

(29). Law's Forms, p. 59, gives a list of plenary causes, viz. (1) all testa-

marily, the proceedings are null and void from the commencement, because it is *ultra vires* for the judge to dispose of them summarily (30). If, on the contrary, in summary causes the proceedings are plenary, such proceedings are valid and binding (31).

### Action.

11. Civil actions are of two kinds: (1) those which are brought to ascertain that purely ecclesiastical acts have been properly performed, such as an election, a resignation, a postulation, a vow; and (2) those which are brought to obtain civil redress for a private wrong. The former class of actions may be dealt with in a summary manner (32). Not so the latter, unless by consent, since they are either brought by those who are forbidden to litigate in temporal courts, or else are instituted to obtain satisfaction from a wrong-doer by means of spiritual censures. The latter class of actions therefore, although civil in form, involve a criminal element (33).

mentary proceedings in solemn form, (2) causes of legacy, (3) defamation, (4), of divorce or separation, (5) of dilapidation, (6) of jactitation of marriage, (7) subtraction of procurations, (8) subtraction of annual pensions, (9) perjury at the instance of parties, (10) simony at the instance of parties, (11) correction by the voluntary promotion of the judge's office, (12) usury at the instance of parties, (13) injection or violence to clergy at the instance of parties, (14) impediments to marriage, (15) seats in Churches; but many of these are no longer the subject-matter of spiritual jurisdiction.

(30). Innocent III. in Decret. Lib. I. Tit. III. c. 22: The process conducted contrary to the form of our rescript and the order of law we declare to be a nullity (inanem).

(31). Ayliffe 151; Law's Forms, p. 60.

(32). Innocent III. in Decret. Lib. II. Tit. VI. c. 5, § 1, says: Lest the Church should suffer injury through a long delay in spirituals and temporals.

(33). Of such a proceeding Innocent III. in Decret. Lib. V. Tit. I. c. 16 says: Although the action concerns a crime, yet it is not a criminal cause, and may be conducted by a proctor. A civil action was brought before Gregory ap. Gratian Caus. II. Qu. 1. c. 7, petitioning for reinstatement in a benefice on the ground that there was no crime deserving deprivation. See Bartolus in Ayliffe 154.

12. The presence of the criminal element in civil actions instituted before a spiritual judge not only requires (1) plenary procedure to be adopted in all such actions whenever the facts are in dispute, but also (2) greater strictness to be observed in the conduct of them than would be necessary in civil actions before a secular judge, and (3) more perfect proof of the facts. When the procedure is in criminal form this strictness is intensified, since the Church, being before all things the kingdom of righteousness and justice, accounts it preferable that many guilty of private wrong-doing should go unpunished in this world rather than that one who denies his guilt should be punished unjustly ([34]). A private accuser is therefore placed at a great disadvantage, as being one who *prima facie* violates the law of Christian charity by publicly attacking his brother's reputation.

13. As every spiritual cause, civil as well as criminal, has avowedly for its object the peace of the Church and the composing of all differences ([35]), two things are required from every private individual who would set the judge's office in motion in his own interest: (1) he must be able and willing to carry the cause through to a decision, and may be required to find security to that effect ([36]); and (2) he must be prepared to take the so-called oath of calumny ([37]), whereby he pledges himself that he

(34). See *Discipline Generally*, note 52.

(35). Const. 5 Edmund, A.D. 1236.

(36). See *Acts in Judgment*, § 4.

(37). Concil. Tolet. XIII. A.D. 653, Can. 2 ap Gratian Caus. XXII. Qu. 1. c. 1 allows oaths to be lawful (1) to make leagues of peace, (2) to cement the good-will of friends, (3) to give credit to the statements of witnesses, and (4) to establish innocence when witnesses are not forthcoming. Law's Forms 282 states that four kinds of oaths are in use in courts Christian: (1) the *oath of truth*, which litigants and witnesses take to answer truly to the best of their knowledge in regard to such things as concern themselves and to the best of their belief as to such things as are not matters of personal knowledge—Const. 17 Boniface, A.D. 1261; (2) the *oath decisory* or *ex officio* or of *purgation*, whereby the principal party either confesses or purges himself. This oath, deprecated by 25 Hen. VIII. c. 14, was abolished by sec. 6 of 13 Car. II. c. 12, so far as the compulsory taking of it is concerned; (3) the *oath of calumny*, or oath against vexatious litigation, a

is not proceeding maliciously or vexatiously (38). These things are not required from a public person, because he is presumed to be acting in the interests of the Church.

14. The principal points wherein procedure in a civil cause, if it comes into judgment, differs from the procedure prescribed in a criminal cause are: (1) The libel must specify the remedy which is asked for, whereas in criminal causes this is not necessary; the judge, who is conversant with the law of the Church, will decide as unto law and justice shall appertain. (2) A defendant is not contumacious *ipso facto* by not appearing when cited, but requires to be libelled against or accused of contumacy before he can be punished for it. (3) Peremptory exceptions, such as a plea that the matter has been judicially settled, may be made at once, without waiting for contestation of suit, as in a criminal cause (39). (4) The judge may in some cases accept a

form of which is the *oath of malice*. This may be administered to both litigants at any stage of the proceedings; and (4) the *oath suppletory*—See Gratian Caus. II. Qu. v.—when the plaintiff has more than half proved his case, and prays that he may be allowed to complete the proof by his own oath. The oath of calumny was required by Justinian's legislation, and is referred to in the law of the Emperor Henry II. A.D. 1047. It is approved of by Honorius II. in Decret. Lib. II. Tit. VII. c. 1, and Lucius III. to Bishop of Ely and Archdeacon of Norwich, *Ibid.* c. 5. Const. 24 Otho, A.D. 1237, enjoins it. Lynd. 72, 108. As to other oaths, Lynd. 298 mentions the oath of faith against heresy, the oath of canonical obedience, and the oath to pay costs. See *Acts in Judgment*, note 138.

(38). According to Law's Forms 283, in this oath the party states (*a*) that he is persuaded that his cause is just and good, (*b*) that when interrogated he will not deny what he believes to be the truth, (*c*) that he will not knowingly use falsehood in proof, (*d*) that he will not fraudulently seek delay, (*e*) that he has neither given nor offered a bribe to win his case, and (*f*) that he has paid no other fees than those allowed by the canon. These declarations are commemorated in the lines—

> "You this shall swear that this your suit doth seem
> Right just to be, at least in your esteem.
> That you when asked the truth will not deny,
> Nor promise aught; neither that knowingly
> You any false proofs will employ,
> Nor urge delays the other to annoy."

(39). See *Acts in Judgment*, § 30.

single witness or a private instrument as proof, or allow the oath suppletory to be taken by the plaintiff to convert half-proof into full proof. In criminal causes half-proof can only be accepted where it is fortified with other confirmatory evidence or a presumption (40). (5) After a conclusion in the cause, witnesses can no longer be admitted.

15. It is a first principle of justice that every cause must be decided in accordance with the laws which were in force at the time the subject-matter of it occurred, and every criminal cause according to those which were in force at the time the instance commenced. A privilege obtained or a law passed during the time that a matter is being judicially contested does not affect the issue retrospectively, unless the law or privilege specially includes pending suits (41).

### Accusation.

16. Accusation is a mode of proceeding in criminal causes originating extra-judicially, but contemplating also a judicial trial in case the charge is denied, in which one person publicly accuses another of crime, and makes himself responsible, if necessary, to prove the same, not for the sake of his correction, but for public vengeance. It may be made either (1) in synod or (2) in audience; but if the charge is denied, it can only be judicially sustained before a judge.

17. The essential features of procedure by accusation are: (1) It is undertaken for the purpose of public vengeance (42); hence the accused must first have been warned (43), and without previous warning it ought not to be allowed, except in the case of what are called excepted crimes (44), viz., treason,

(40). Honorius III. in Decret. Lib. II. Tit. XIX. c. 13; Coelestin. III. *Ibid.* Tit. XX. c. 27; Innocent III. *Ibid.* Lib. III. Tit. XXVII. c. 3.

(41). Ayliffe 152.

(42). Innocent III. in Decret. Lib. V. Tit. I. c. 16: Accusation is instituted for deposition, and denunciation for correction.

(43). Pseudo-Isidor. in Decret. Lib. V. Tit. I. c. 2.

(44). Innocent III. A.D. 1206, *Ibid.* c. 20; Lynd. 73; Craisson, § 5804. See note 112, and *Discipline Generally*, § 6.

simony, sacrilege, homicide, forgery, and embezzlement. (2) It does not apply to cases of notorious crime,—in these the judge proceeds, of mere office, without an accuser ([45])—to cases of heresy, which are established by inquisition, or to matters which are usually dealt with in visitation courts ([46]), but only to crimes known to the accuser which might otherwise have remained unknown. (3) The accuser takes upon himself the onus of proof ([47]); otherwise it would be presentment, not accusation.

18. Procedure by accusation is regarded as specially odious ([48]), because it is a breach of charity to expose non-notorious crimes for public punishment ([49]). It is therefore surrounded with several safeguards ([50]): (1) The accuser must be a person lawfully competent to accuse ([51]). (2) The person accused must be one whom he may accuse. (3) An inscription must be solemnly made ([52]). (4) Caution must be given for the judicial

(45). Ambros. ap. Gratian Caus. II. Qu. 1. c. 15 : Manifest things need no accuser. Eugenius III. in Decret. Lib. v. Tit. I. c. 9 : A crime perpetrated in public needs not the voice of an accuser. See notes 125 and 139.

(46). Innocent III. in Decret. l. c. c. 21, nevertheless declares that crimes denounced for correction in visitation may, if grave enough, be dealt with for punishment.

(47). Gregory, A.D. 598, ap. Gratian Caus. VI. Qu. v. c. 1 : The onus of proof rests not on you [the accused], but on the accusers. Craisson, § 5800 : An accuser who does not undertake to prove his charge is only a denouncer.

(48). Pseudo-Isidor. ap. Gratian Caus. VI. Qu. 1. c. 16 : It is the height of iniquity to disparage and accuse brethren.

(49). Augustin ap. Gratian Caus. II. Qu. 1. c. 19 : Offences committed before all should be corrected in the sight of all ; but secret offences should be secretly corrected. Lynd. 334. See on detraction, Lynd. 61, 71, 78. So Liguori Lib. IV. n. 247 : Delinquens jus habet ad servandum suam famam ; because an accusation incapacitates for promotion until it is disposed of, according to Gregory in Decret. Lib. v. Tit. I. c. 4 and 16.

(50). Ayliffe 24.

(51). Const. 6 Clarendon, A.D. 1164, requires accusers to be *certi et legales;* Pseudo-Felix II. Ep. I. c. 17 in Decret. Lib. v. Tit. I. c. 1 : If there be not a legitimate accuser, let not the accused be called upon to answer (fatigetur).

(52). Cod. Theodos. Lib. II. Tit. 2, c. 1 ap. Gratian Caus. IV. Qu. IV. c. 2,

prosecution of the charge if necessary. (5) In the judicial prosecution the forms of law must be followed most strictly.

19. All persons are not allowed to come forward as accusers. Those who are disqualified are: (1) women and children (53); (2) criminous (54) or infamous (55) persons, including apostates and heretics (56); (3) paupers (57), and those who are paid to accuse (58); (4) avowed enemies (59); and (5) persons excommunicate with the greater excommunication (60), and generally all who are forbidden to be received as witnesses (61). None,

and Caus. II. Qu. III. c. 2; Innocent III. A.D. 1202, in Decret. Lib. V. Tit. c. 16; Concil. Lat. IV. A.D. 1215, Can. 8, *Ibid.* c. 24.

(53). Dig. ap. Gratian Caus. II. Qu. I. c. 14: Some are forbidden to accuse because of sex and age, as women and children; others because of an obligation, as those who are in another's pay. Cod. IX. Tit. I. l. 12, *Ibid.* Caus. XV. Qu. III. c. 1: A woman is not allowed to be an accuser of a crime which comes into public judgment, unless she is prosecuting a wrong done to herself or her belongings.

(54). Concil. Const. A.D. 382, Can. 6: That they who have been themselves before accused be not allowed to accuse a bishop or clergyman. Gratian Caus. II. Qu. I. c. 14; Pseudo-Isidor. *Ibid.* Caus. III. Qu. IV. c. 4, mentions incestuous persons. Caus. VI. Qu. I. c. 1, 6, and 17.

(55). Codex Eccles. Afric. 129, and Concil. Carthag. VII. A.D. 419, ap. Gratian Caus. IV. Qu. I. c. 1, excludes from accusing slaves, freedmen, all forbidden by the laws of state, and infamous persons, heretics, pagans, or Jews. Pseudo-Isidor. ap. Gratian Caus. II. Qu. VII. c. 23; also Caus. III. Qu. V. c. 4, 9, 10; Caus. VI. Qu. I. c. 2, 3, 17, enumerates as infamous persons, homicides, perjurers, robbers, poisoners, adulterers, cravens in war, robbers of churches, slanderers of others.

(56). Concil. Const. A.D. 382, Can. 6: That heretics and schismatics may not accuse orthodox bishops. Gratian Caus. II. Qu. VII. c. 23; Caus. III. Qu. IV. c. 1 and 2; Caus. VI. Qu. I. c. 17.

(57). Dig. ap. Gratian Caus. II. Qu. I. c. 14.

(58). *Ibid.*

(59). Pseudo-Isidor. ap. Gratian Caus. III. Qu. IV. c. 10, and Qu. V. c. 2, 3, 4, and 13; Pseudo-Stephen II. Ep. 2 in Decret. Lib. V. Tit. I. c. 7; Alexander III. *Ibid.* c. 13; Innocent III. A.D. 1206, *Ibid.* c. 19.

(60). Concil. Carthag. VII. A.D. 419, ap. Gratian Caus. IV. Qu. I. c. 1; Pseudo-Isidor. *Ibid.* Caus. II. Qu. VII. c. 4; Caus. III. Qu. IV. c. 7; Caus. VI. Qu. I. c. 14 and 17.

(61). Gratian Caus. III. Qu. V. c. 517; Caus. VI. Qu. I. c. 5 and 19. See *Acts in Judgment*, § 39.

however, excepting conspirators and persons excommunicate, are excluded from being accusers for wrongs done to themselves ([62]). Presbyters and deacons are forbidden to act as accusers, even in their own causes, and should procure some layman to act for them if necessary ([63]).

20. No one can be lawfully accused by an inferior ([64]), unless the latter is seeking redress for a personal wrong ([65]). Hence a Christian may not be accused by an infidel or Jew ([66]), nor a presbyter by a layman ([67]), nor a bishop by a presbyter ([68]), nor a master by a freedman or servant ([69]). All persons are, however, at liberty to denounce a superior for correction, provided the charges are true ([70]); but this is not accusation, the object of which is vengeance. For the same reason neither the pope nor the sovereign can be accused by any one in the proper sense of the term ([71]), but both may be supplicated for redress in their own courts, and may also be denounced for heresy in an ecumenical synod ([72]).

(62). Concil. Const. A.D. 382, Can. 6 : If any one bring a private or personal accusation . . . no regard shall be had of the person or religion of him who brings it. Codex Eccles. Afric. 129 ; Innocent III. in Decret. Lib. v. Tit. I. c. 20 ; Lynd. 304 ; Ayliffe 24.

(63). Concil. Autissiodor. A.D. 573, Can. 41.

(64). Pseudo-Clemens ap. Gratian Caus. VI. Qu. I. c. 5, requires the accusers of presbyters to be their equals. Caus. VI. Qu. I. c. 2 : As superiors cannot be judged by inferiors, no more can they be accused.

(65). Concil. Carthag. III. A.D. 397, ap. Gratian Caus. IV. Qu. VI. c. 1 : If the person of the accuser is reprehensible, let him not be admitted to proof except to maintain his own rights (*causes*), so that they be ecclesiastical or criminal rights. Concil. Carthag. VII. c. 2, A.D. 419, *Ibid.* c. 2 : All to whom accusation is forbidden have a right to accuse in their own causes. See note 59.

(66). Pseudo-Isidor. ap. Gratian Caus. III. Qu. IV. c. 11.

(67). Gratian Caus. II. Qu. VII. c. 1, 2, and 3 ; Alexander III. in Decret. Lib. v. Tit. I. c. 10.

(68). Gratian Caus. III. Qu. IV. c. 8, 9 ; Caus. VI. Qu. I. c. 13.

(69). Gratian Caus. II. Qu. I. c. 14 ; Caus. III. Qu. V. c. 8.

(70). Concil. Epaon. A.D. 517, Can. 24 : We allow laymen, if they have anything criminal to object, to propound it against clergy of any degree, so that what they say is the truth.

(71). Ayliffe 24.

(72). Gratian I. Dist. XL. c. 6.

21. To prevent accusations being maliciously made, no accuser is allowed to attempt judicial proof until he has entered into a bond pledging himself to submit to the same penalty in case of failure which would be inflicted on the accused if the charge should prove true (73). This is termed inscription or subscription to the law of retaliation (*lex talionis*) (74). An accuser, moreover, who fails on one charge cannot be heard on any other (75), because he has thereby become disqualified for being an accuser, and may be excommunicated for slander (76). Inscription is not, however, necessary when the crime of apostasy is charged (77).

22. Since the effect of accusation is to render the accused incapable of promotion until it is disposed of (78), one who objects

(73). Concil. Const. A.D. 382. Can. 6: Let not informers be permitted to produce their allegations till they have obliged themselves in writing to some equal penalty, if it appear that the information was false. Gregory ap. Gratian Caus. v. Qu. VI. c. 2; Pseudo-Isidor. *Ibid.* Caus. II. Qu. VIII. c. 4: He who objects a crime, let him put in writing that he will prove it. He who fails to prove it, let him bear the penalty which he pressed for. *Ibid.* Caus. II. Qu. II. c. 2: Let the false accuser who fails in proof receive the like retribution (*talionem*). Concil. Lat. IV. A.D. 1215, Can. 8, *Ibid.* c. 24: Accusation ought to be preceded by lawful inscription. This is also required by the Bull of Pius V. A.D. 1566, *Cum primum.* See note 47.

(74). Pseudo-Isidor. ap. Gratian Caus. II. Qu. III. c. 2; Innocent III. in Decret. Lib. v. Tit. I. c. 14; Lynd. 73, 278; Ayliffe 23.

(75). Concil. Carthag. VII. A.D. 419, Can. 3, in Codex Eccles. Afric. 130; Concil. Rom. A.D. 704, in H. and S. III. 260.

(76). Concil. Elib. A.D. 305, Can. 74: If he has failed to prove [his charge] before the assembled clergy, let him be excommunicated (abstineri) for five years. *Ibid.* Can. 75 ap. Gratian Caus. II. Qu. IV. c. 4: But if any one charges a bishop, presbyter, or deacon with false crimes and cannot prove them, we decree that communion should not be given him, even at the end of life. Stat. Eccl. Ant. Can. 55, A.D. 505: Let the bishop excommunicate accusers of brethren who fail to prove their charges. Hadrian *Ibid.* Caus. v. Qu. I. c. 1, directs a false accuser to be flogged. Gregory, A.D. 594, *Ibid.* Qu. VI. c. 4, orders a false accuser to be excommunicated. Concil. Agath. A.D. 506, Can. 32, *Ibid.* c. 8, directs him to be "kept away from the threshold of the Church and the communion of the faithful."

(77). Ayliffe 25.

(78). Gregory in Decret. Lib. v. Tit. I. c. 4.

a crime by way of accusation must also give security that he will persevere in prosecuting it until sentence is given (79). A criminal accusation cannot, therefore, be withdrawn or compounded for, when it has once been brought, without leave of the judge (80), and even if it is abandoned before inscription, the accuser must be required for ever after to hold his peace, or, as it is said, perpetual silence must be imposed on him (81). An accuser who withdraws without leave may be punished for deserting the cause (82). Leave is only given to withdraw if (1) the accusation does not seek to establish a greater crime, or (2) the prosecution of it might lead to bloodshed.

23. If an accusation has to be established in judgment, the process is the same as in any other criminal suit. There must be a proper libel in writing (83), contestation of suit, exceptions, replications, and proof by witnesses, or by instruments clearer than noon-day (84), a term probatory, and a conclusion (85), and the cause itself must be determined within two years (86).

24. Prior to the eleventh century, procedure by public accusation was the only mode of proceeding for public vengeance open to a private accuser; for proceedings in visitation synods were taken for correction (87). Since that time it has

(79). Ayliffe 25.

(80). Gregory in Decret. Lib. v. Tit. xxii. c. 1, gives as the reason, Lest the agreement should prove not to be the result of charity but of the accuser's having been bought off.

(81). Innocent iii. a.d. 1198, in Decret. Lib. v. Tit. i. c. 14, says that an accuser may withdraw a charge before publicity is given to it, but in that case must be required ever after to hold his peace. Lynd. 73 says that the accused's composition is equivalent to a confession. As to cases which may be settled, see Decret. Lib. i. Tit. xxxvi., and *Acts in Judgment*, § 19.

(82). Gregory ap. Gratian Caus. v. Qu. vi. c. 4. See also Caus. ii. Qu. iii. c. 2 and 3.

(83). Pseudo-Isidor. *Ibid.* Caus. ii. Qu. viii. c. 1; Decret. Lib. ii. Tit. iii. c. 1.

(84). Cod. Lib. iv. *Ibid.* Caus. ii. Qu. viii. c. 2; Pseudo-Isidor. *Ibid.* c. 5, requires the chief witnesses to be produced personally.

(85). Ayliffe 25.

(86). Ayliffe 153.

(87). Bouix de Judic. ii. 114. See note 91.

gradually become obsolete, partly from regard for the reputation of others (88), but still more from fear of the penalties incurred in case of failure (89). In most countries spiritual courts are no longer allowed to proceed vindictively, but only for the soul's health. In this country the place of accusation has been taken by judicial denunciation and the promotion of the judge's office when the facts are denied, whereby the accuser attains the same object, provided the judge allows his office to be promoted, and does not expose himself to any risk in case of failure (90).

### Denunciation or Presentment.

25. Denunciation is a mode of procedure in which an individual denounces or presents another's offence to the Church, without undertaking the onus of proof, in order that the offender, as circumstances require, may receive either warning, correction, or punishment (91). When the object in making the dresentment is to obtain redress for some private wrong, it is called a complaint (*querela*). When the presentment is of common fame, and not of a fact known to the denouncer, it forms the prelude to inquisition (92).

26. Denunciation is said to be of three kinds (93)—(1) paternal or evangelical, (2) canonical, and (3) judicial. Paternal and canonical denunciation are undertaken wholly or primarily for

(88). Lynd. 332.

(89). Gratian Caus. II. Qu. III. c. 8: If the judge says, You have not proved it, he spares the accuser. But if he says, You have slandered him, he condemns him. Const. 1 Langton pronounces sentence of excommunication on such as slander others. See *Spiritual Courts*, note 55.

(90). Ayliffe 26; Ecclesiastical Courts Commission, 1883, II. 207.

(91). Innocent III. A.D. 1202, in Decret. Lib. V. Tit. I. c. 16: Accusation is instituted for the purpose of deposition, denunciation for correction. The employment of denunciation for the purpose of deposition is of comparatively late origin, but Innocent III. *Ibid.* c. 21 allows vindictive penalties to be imposed for crimes established by inquisition. See note 46.

(92). Concil. Lat. IV. in Decret. Lib. V. Tit. I. c. 24, quoted note 94.

(93). Ayliffe 210. Innocent III. in Decret. Lib. II. Tit. I. c. 13 mentions two only, paternal and judicial. Lynd. 311.

the amendment of an offender, and, according to the Gospel precept, ought to be preceded by twofold personal warning (94). Judicial denunciation, on the other hand, is undertaken to procure the redress of some public or private wrong, and being the mediaeval substitute for accusation, it may be resorted to without previous warning whenever the canons allow it (95).

27. Paternal or evangelical denunciation is a reporting to the Church, or to the prelate who represents it, a matter which has already been the subject of two private warnings, in order that by means of a third warning, coming from the prelate as a father, the offender may be brought to repentance. It is called evangelical, because it is made in accordance with the Gospel precept. It may be made by any one, and by whom-

(94). Matt. XVIII. 15-17 ; Luke XVII. 3, 4 ; Concil. Aurel. V. A.D. 541. Can. 17 : If any one has a complaint against a bishop, let him first approach him in the spirit of charity, that, warned by friendly intercourse, he may set those matters right which are the cause of complaint. Baeda Poenit. V. 7 in H. & S. III. 331. Concil. Ebor. A.D. 1195, Can. 19 : Let him that is suspected of a crime upon common fame be familiarly admonished once, twice, and thrice by the dean of the place to reform himself ; which, if he do not, let the dean reprove him, in conjunction with two or three more with whom he hath lost his reputation ; if he cannot be reformed by those means, let him tell the Church, *i.e.*, let him be reproved in the chapter, that, upon conviction or confession, he may be canonically punished ; or, if he deny it, and cannot be convicted, a canonical purgation may be enjoined him, so that the compurgators do not exceed the number of twelve, and that more or fewer be accepted, according to the quality and circumstances of the person and of the infamy, at the discretion of the judge. Concil. Lat. IV. A.D. 1215, in Decret. Lib. V. Tit. I. c. 24 : As lawful accusation must be preceded by inscription, so denunciation must be preceded by charitable warning, and inquisition by the presentment of fame. Innocent III. *Ibid.* Tit. III. c. 31 repeats these words ; also Lib. I. Tit. XXVII. c. 1, and Lib. II. Tit. I. c. 13. Const. 26 Langton, A.D. 1222 ; Concil. Lugdun II. A.D. 1274, in Sext. Lib. V. Tit. XI. c. 9 ; Const. 24 Peckham, A.D. 1281 ; Lynd. 143, 211, 278.

(95). Const. 5 Peckham, A.D. 1279, and Const. 21 Peckham, A.D. 1281, quoted in *Discipline Generally*, note 17 ; Const. 1 Winchelsea, A.D. 1305. Const. 2 Stratford, A.D. 1343, orders punishment to be inflicted without warning for neglect of clerical dress. Lynd, 122, 127, 196 ; Craisson, § 6411.

soever made it should be received by the prelate to whom it is made as a private communication, and may not be made the basis of proceedings in judgment (96).

28. Canonical denunciation, on the other hand, is made not only for the good of the offender, but also for the public good, and it is made to the Church publicly and solemnly (97). It ought, therefore, always to be contained in articles reciting that the offender has been already twice privately warned, and unless this recital is contained it ought not to be received (98). It may be either (1) general or (2) special (99). In a general denunciation, one who may not accuse may denounce, and in it the superior does not proceed unless the matter denounced is found to require it. A special canonical denunciation is made by one who has a special interest to serve, as by a patron who desires to have a good incumbent (100). If, however, the matter complained of is public, there is no need for proving private warning (101).

29. Judicial denunciation is by many considered to be identical with canonical denunciation, and to differ from it only in that it is made for the purpose of judicial proceedings being instituted in the public interest, rather than for the good of the offender. In itself it is not a judicial proceeding, but only a prelude to provoke the exercise of the judge's office, and a species of accusation in which the informant is not made a party in the cause. It should therefore (1) always be made in writing, (2)

(96). Stremler des Peines Ecclésiastiques, p. 209 ; Craisson, § 6413, say this communication must be regarded as private.

(97). Concil. Westminster A.D. 1200, Can. 7 : That prelates do not excommunicate their subjects without canonical warning first given them, except their crimes be such as bring them under a general excommunication. Alexander III. in Decret. Lib. III. Tit. II. c. 4 authorises the Archbishop of Canterbury to depose concubinary clerks if they do not desist after warning. Alexander III. to Bishop of London, *Ibid.* c. 6.

(98). Innocent III. in Decret. Lib. V. Tit. I. c. 20 : If the said bishop has not been warned by them [his accusers] touching the alleged excesses, do you repel them from making presentment. Ayliffe, p. 21.

(99). Ayliffe 210.

(100). Ayliffe 210.

(101). Ayliffe 210.

with the solemnities usual in cases of accusation, excepting the inscription (102), and (3) it should name the persons through whom the crime may be proved, because the same exceptions may be taken to the witnesses that might otherwise have been taken to the accuser (103). In accusation the third requirement is not necessary, because the accuser takes upon himself the onus of proof. Unless sufficient evidence is indicated to prove the crime, a judicial denunciation should not be received (104).

30. Both canonical and judicial denunciation may be made either (1) solemnly (105), as in a visitation court, when the people, or their representative synods-men (106) are examined upon oath under pain of excommunication, called the oath of Christianity (107); or (2) at some other time, publicly or privately. In the first case it is called public, in the two latter private denunciation (108).

31. No one is bound to give information of another's offence unless (1) it is a mortal sin (109); (2) is certainly known to the

(102). Innocent III. in Decret Lib. v. Tit. I. c. 16.

(103). Innocent. III. *Ibid.* c. 20. Lynd. 278: If a judge, by virtue of a presentment, proceeds to inflict penalties [*i.e.*, not for correction], the accused may take the same exceptions to the denouncer that he might have done to an accuser.

(104). Lynd. 276.

(105). Reiffenstuel Lib. v. Tit. I. No. 89.

(106). Concil. Lat. IV. A.D. 1215, Can. 6 in Decret. Lib. v. Tit. I. c. 25, and Tit. VII. c. 13. Const. 17 Edmund, A.D. 1236: Let there be two or three men in every deanery, who have God before their eyes, to denounce the public excesses of prelates or other clergy, at the command of the archbishop or his official. Lynd. 277.

(107). Concil. Mogunt. A.D. 851, Can. 8, in Decret. Lib. v. Tit. XXXIV. c. 2, quoted note 124; Pseudo-Isidor. ap. Gratian Caus. XXXV. Qu. VI. c. 7. Can. 26 Edgar, A.D. 960, requires the clergy to denounce in synod (*i.e.*, in visitation-court) those whom they cannot bring to satisfaction. Concil. Lat. IV. A.D. 1215, Can. 6 in Decret. Lib. v. Tit. c. 25.

(108). Lynd. 278; Ayliffe 210.

(109). Baedae Poenit. v. 7 in Haddan & Stubbs III. 331: Let him who passes over the mortal sin of another, and does not warn him according to the Gospel rule, do penance for so long as he has failed in his duty. Ayliffe 211; Can. 6 Edgar, A.D. 960; Lynd. 278.

informer (110); and (3) unless the giving of information is likely to lead to some spiritual good (111). Yet every one is bound to give such information (112) if the offence, besides being a mortal sin and known to the informer, is also one which does spiritual harm to the community, or to others (113). Among others, however, accomplices are not included (114).

32. Certain matters, again, cannot be made the subject of denunciation. Thus no one can be publicly denounced for bygone offences after the period of penance prescribed by the canons has elapsed (115). Some offences are therefore barred by an interval of six months, others of a year, others, again, of five years, and all by twenty years (116). Instead of varying periods, the statute law of this country has interposed, fixing a time limit for the institution of public proceedings for the correction or punishment of offences, of six or eight months in the case of laymen (117),

(110). Lynd. 311.

(111). Craisson, § 5836.

(112). Lynd. 73 says, in cases of adultery, rape, incest, treason, heresy, and excepted crimes, p. 311.

(113). Baedae Poenit. v. 7 in Haddan and Stubbs III. 331; Craisson, § 5834.

(114). Alexander III. in Decret. Lib. II. Tit. XX. c. 10.

(115). Isidor. ap. Gratian Caus. XXXIII. Qu. II. c. 11, assigns seven years as the period of penance for any mortal sin, which period may be abridged for some sins and increased for others of great enormity. The penitential of Theodore gives penances from one day, three days, seven days, up to seven years, ten years, twelve years, and fifteen years. Schmalzgrueber ap. Bouix de Judic. II. 19 says that a bishop may receive an accusation at any time. Innocent III. in Decret. Lib. V. Tit. XXXIV. c. 16 says that a defamed archbishop may be required to clear himself by purgation for the whole time that he has held his archbishopric. See note 156.

(116). Innocent III. in Decret. Lib. II. Tit. XXV. c. 6.

(117). The Act 27 Geo. III. c. 44, A.D. 1787, limited the time for commencing proceedings in suits for defamation (which have been since abolished by 18 and 19 Vict. c. 41, A.D. 1855) to six calendar months, and in suits for fornication, incontinence, and brawling (which have been also since abolished by 23 and 24 Vict. c. 32, A.D. 1860) to eight calendar months from the time when such offence shall have been committed, and forbad them altogether for fornication at any time after the parties shall have lawfully intermarried. See *Free* v. *Burgoyne*, No. 187, in Rothery's "Ecclesiastical Appeals."

and of two years (118), extended by recent legislation to five years (119), in the case of those in Holy Orders. If a conviction in a common law court has at any time been obtained, the time limit for purposes of vengeance is extended to a period of six months by former, and to a period of two years by recent legislation, from the date of the conviction (120).

33. When a superior receives a presentment, it is his duty to act wisely, according to the rule of charity (121), carefully considering the person and the motives of the informer (122), and remembering that an offender's reputation is as necessary to others as his life is to himself (123). If it is an official presentment of suspected crime, he should warn in private, then before witnesses, and afterwards admonish in consistory if necessary (124). If it is a presentment of notorious crime, he is

(118). By 3 and 4 Vict. c. 86. sec. 20. It has been ruled by the Privy Council that the commencement of the suit dates from the service of the citation upon the accused clerk, and not from the date of the issue of a preliminary commission. *Denison* v. *Ditcher*, Deane and Swabey's Rep. 334 ; 11 Moor. P. C. 324.

(119). 55 and 56 Vict. c. 32, sec. 5.

(120). 3 and 4 Vict. c. 86, sec. 20, and 55 and 56 Vict. c. 32, sec. 5. Craisson, § 6407, observes that censure in such cases is not true censure, but only necessary caution for avoiding scandal. Liguori Lib. VII. 49.

(121). Gratian Caus. XXVI. Qu. VII.

(122). Pseudo-Isidor. ap. Gratian Caus. II. Qu. VII. c. 17: If any are accusers of bishops and other clergy, it befits not to hear them in judgment before the opinion of their honesty has been weighed [and it has been ascertained], with what object they are thus presumptuous, whether in good faith or temerity . . . for God's sake, or for vainglory, or even for covetousness. *Ibid.* c. 18.

(123). Augustin ap. Gratian Caus. XI. Qu. III. c. 56: To ourselves our life is necessary, to others our reputation. Lynd. 73: In losing reputation, life is worse than death. Causing scandal is itself a ground for punishment. See letter of Charles to Offa in Haddan and Stubbs III. 487. Lynd. 237, 233 says that avoiding scandal is good ground for many otherwise forbidden acts.

(124). Concil. Mogunt. A.D. 851, in Decret. Lib. v. Tit. XXXIV. c. 2: If any priest, careless of his conduct, has by bad example allowed evil to be suspected of him, and the people, constrained by the bishop under the bann of Christianity, have disclosed his want of reputation, and there are no certain accusers of the crime, let him first be admonished by the bishop

bound at once to proceed of mere office (125). If it is a private presentment, he should forbear to proceed judicially, unless (1) the accused is already defamed (126), or (2) he has satisfied himself by warning that reform is otherwise not to be hoped for, or (3) unless the offence is so injurious to others that warning is out of the question. Should he act otherwise, he commits a grave breach of charity (127), though not such a wrong for which there exists a remedy.

### Inquisition.

34. Whenever presentment is made of common fame only, and not of facts known to the denouncer, or whenever there is grave suspicion of the existence of some crime, a case arises for inquisition (128). Inquisition is the judge's act setting inquiry on foot either *ex mero motu*, in the interests of the Church (129), to ascertain whether the rules of the Christian life

apart, then in the presence of two or three witnesses, and if he refuse then to amend, let the bishop visit him with public censure in the assembly of the presbyters. If even then he refuse to amend his ways, let him be suspended from office until he come to proper satisfaction, lest the faithful should be scandalised through him. Gregory ap. Gratian. I. Dist. LXXXVI. c. 23 : If anything should come to your ears respecting any cleric, which might justly give you offence, do not believe it too readily, nor let an unknown matter goad you on to vengeance, but, in the presence of the senior presbyters of the Church, let the truth be carefully investigated, and then, if the quality of the charge so requires, let canonical censure visit the delinquent's offence. Concil. Lat. IV. A.D. 1215, Can. 8 in Decret. Lib. V. Tit. I. c. 24, and Lib. III. Tit. II. c. 2 ; Lynd. 211.

(125). Alexander III. to Archbishop of Canterbury in Decret. Lib. III. Tit. II. c. 4 ; the same to the Bishop of London, *Ibid.* c. 6 ; Innocent III. to Bishop of Exeter, *Ibid.* c. 8. Lynd. 323 defines notoriety as proof beyond dispute, needing no further discussion. See note 45.

(126). Concil. Lat. III. A.D. 1179, in Decret. Lib. V. Tit. I. c. 21 and 24 ; Craissou, § 5827.

(127). Letter of Daniel of Winchester to Boniface, A.D. 740, in Haddan and Stubbs III. 348.

(128). Innocent III. in Decret. Lib. III. Tit. II. c. 8, says that report is no manner of proof, but notoriety is. *Id. Ibid.* Lib. V. Tit. I. c. 21 ; Ayliffe 278, 488.

(129). Ayliffe 152 ; Rothery's Appeals IX.

are being observed, or else as the result of a presentment to ascertain whether a report or suspicion is true. In the former case it is called general inquisition, in the latter particular inquisition. General inquisition is the method anciently and to some extent still practised at a visitation synod, when a number of questions are propounded to be truly answered under pain of excommunication (130). Particular inquisition appears to have been introduced after the eleventh century, when the practice of accusation fell into disuse, either for the purpose of correcting the guilty or clearing the innocent.

35. The aim of general inquisition being to ascertain that the rules of Christian life are being faithfully observed, this object is found to be best attained by propounding articles of inquiry in a synod or visitation-court. On the other hand, the aim of particular inquisition being to ascertain whether a particular person is guilty of offences of which he is suspected or denounced (131), this object is best secured by direct questions put to him or else by a judicial proceeding. At one time inquisition was largely resorted to for the purpose of suppressing heresy (132); now it is almost entirely confined to ascertaining that clergy are conducting themselves as beseems their profession, or are conforming to the rules of the foundations to which they belong.

36. Before particular inquisition is resorted to there should exist (1) either strong grounds for suspecting crime, or the presentment of some informer who is himself above suspicion (133);

(130). For instance, in Hingeston-Randolph's Stapeldon's Register's, p. 130, under Culmstoch, the Visitation, A.D. 1319, reports (1) on the condition of the vestments and furniture of the Church; then (2) the *testes sinodales* report that the vicar is a good-living man and of honest conversation, as also his clerk, and he carefully teaches his parishioners. In visiting the sick, baptizing infants, and in other matters of his office, they know of nothing to complain of, except that it appears to them that on festival days he allows too long a pause between Matins and Mass.

(131). Innocent III. in Decret. Lib. II. Tit. XIV. c. 8.

(132). See *Excesses*, § 15.

(133). Lynd. 278.

and (2) public fame or scandal (134). Without ill-fame preceding, particular inquisition ought not to be made, at least publicly (135), unless such a crime as apostasy or heresy is charged (136), since (1) the rule of charity enjoins respect for another's reputation (137), and (2) publicity in such a case may do more harm than good to the Church. Particular inquisition may, however, be made (138) privately and preparatorily, or, as it is said, by way of summary information, in order to ascertain (1) whether there exists probable proof of the alleged offence, and (2) whether the accused is defamed in consequence of it. For summary information the presence of the accused is not needed.

37. If the result of private inquisition is to establish a *primâ facie* case against the accused, and also the existence of ill-fame, particular inquiry may be made solemnly in audience or synod, when personal answers may be required upon oath from the suspected person. Should the latter admit the offence, or the same be notorious, he may then be dealt with summarily by

(134). Concil. Lat. IV. A.D. 1215, Can. 8 in Decret. Lib. v. Tit. I. c. 24, requires clamosa insinuatio to precede inquisition. Lynd. 254, 312.

(135). Innocent III. in Decret. Lib. v. Tit. I. c. 19 and 21; Concil. Lat. IV. A.D. 1215, *Ibid.* c. 24: Inquisition ought always to be preceded by ill-fame or rumour; otherwise proceedings ought not to be taken. But Boniface VIII. in Sext. Lib. v. Tit. I. c. 1 and 2, states that if inquisition is held when a person has not previously been defamed, and is submitted to without protest, any crime thus disclosed may be visited with punishment.

(136). Concil. Lat. IV. Can. 3, *Ibid.* Lib. v. Tit. VII. c. 13, § 2: Those who are only noted as suspected of heresy, unless having regard to the suspicion and the quality of the person they have demonstrated their innocence by a suitable purgation, ought to be struck with the sword of anathema. Innocent III. A.D. 1207, *Ibid.* Tit. IX. c. 3: Clergy who are defamed for apostasy because they have abandoned the clerical garb . . . must be restrained by ecclesiastical constraint until, if proof is not forthcoming, they have made their canonical purgation to do away with their ill-fame. See note 44.

(137). *Id. Ibid.* c. 19; Concil. Lat. IV. *Ibid.* c. 24: Ne forte per leve compendium ad grave dispendium veniatur. Boniface VIII. in Sext. Lib. III. Tit. XX. c. 1, § 4; Lynd. 109.

(138). Lynd. 17 says preparatorily or solemnly. *Id.* 109.

the mere office of the judge (139). Should he deny it, the matter may be referred for judicial discussion in a plenary proceeding by promoting the judge's office (140); and since the oath *ex officio* has in this country been abolished by statute (141), and in the case of clergy new modes of procedure have by recent legislation been introduced in place of the canonical methods, a judicial trial is the only available course when the offence is denied.

38. Whenever a judge proceeds of mere office to correct or punish, the necessary promoter (142), who undertakes to act for the Church, enjoys several privileges denied to a voluntary promoter. (1) Custom exempts him from the obligation of subscribing to the law of retaliatory punishment or from taking the oath against vexatious litigation (143). (2) The judge may require the accused to give an affirmative or negative answer upon oath (144). (3) Proofs are not admitted to establish the defendant's good fame. (4) A negative answer holds the place of contestation of suit (145). (5) Additional witnesses may be examined after the publication of evidence. On the other hand, the same exceptions may be taken to a voluntary promoter as to an accuser (146).

(139). Nicolaus ap. Gratian Caus. II. Qu. 1. c. 21 ; Innocent III. in Decret. Lib. v. Tit. XXXIV. c. 15. Innocent IV. in Sext. Lib. III. Tit. XX. c. 1, § 4, says that the ordinary would be wanting in his duty if he failed to punish. Ayliffe 153, 240, 450. See note 45.

(140). By 3 and 4 Vict. c. 86, this is the only method now permitted for the punishment of clerical excesses, even though notorious. To relieve bishops from expense and responsibility 55 and 56 Vict. c. 32 was recently passed, which empowered them to deprive for any moral offence, and threw the onus of declaring the offence proven upon an irresponsible and mixed body of nominees.

(141). 16 Car. I. c. 11, A.D. 1640; 13 Car. II. c. 12, sec. 4. Rothery's Ecclesiastical Appeals, p. IX. says that in practice the oath was still taken. See *Acts in Judgment*, notes 150–152.

(142). Ayliffe 274, 397.

(143). *Ibid.* Craisson, § 5931.

(144). Ayliffe, 397. See note 141.

(145). Innocent III. in Decret. Lib. v. Tit. XXXIV. c. 15 ; Ayliffe 397.

(146). Lynd. 279.

39. If as the result of solemn inquisition no adequate proof is forthcoming of the existence of the crime denounced or suspected, it is competent for the prelate or judge to administer the oath of purgation (147), and thus establish the innocence of the accused, and to suspend a defamed clerk from office (148) until he has purged himself. In this country the oath cannot now be compulsorily administered, at least not to

(147). Concil. Agath. A.D. 506, ap. Gratian Caus. II. Qu. v. c. 12: If lawful accusers cannot prove the crimes of a presbyter, and he denies them, then let him, if he be able, purge himself from crime with seven fellows of his own order. If a deacon be accused of the same crime, let him excuse himself with three. Gregory II. A.D. 726, *Ibid.* c. 5: If a presbyter or any priest [*i.e.*, sharer in the official priesthood, bishop, or deacon] be accused by the people, and there are no certain witnesses, . . . let an oath be administered to him in public, and let him call Him to witness the purity of his innocence to Whom all things are naked and open. Concil. Wormac. *Ibid.* c. 26: If a bishop or presbyter is charged with a crime such as manslaughter, adultery, theft, or wrong-doing, let him say mass for each charge, and communicate, and show himself innocent of such imputation. If he fail to do so, let him for five years be removed from his Church. Cnut's Law 5, A.D. 1017: If a priest who lives regularly be impleaded for crimes, and knows himself to be clear, let him say mass if he dare, and make his purgation by himself alone, if it be a single accusation [*i.e.*, made by three men]; if the accusation be triple [*i.e.*, made by six accusers], let him purge himself on the Housel if he dare, together with two of the same order. Concil. Ebor. A.D. 1195, Can. 19, quoted note 94. Alexander III. in Decret. Lib. v. Tit. XXXIV. c. 6, reproduced in Concil. Westminster A.D. 1200, Can. 12: Let such as are publicly defamed or suspected, but cannot be convicted, be thrice admonished to confess and make satisfaction. If they persist in denying the crime, let a purgation be enjoined them. Const. 29 Langton, A.D. 1222; Innocent III. to Patriarch of Aquileia, *Ibid.* c. 5; Gregory IX. *Ibid.* Lib. II. Tit. XXIV. c. 36: The oath of purgation cannot be refused except for a just cause. . . . If the promoter altogether fails in proof, the defendant ought to win, although he has done nothing. But if a presumption is made out for the promoter, the oath ought to be tendered to the defendant, that he may thereby prove his innocence, unless the judge, considering all the circumstances of the case, should think it best to tender it [the oath suppletory] to the promoter. Const. 5 Boniface, A.D. 1261; Const. 10 Peckham, A.D. 1279; Const. 10 Stratford, A.D. 1342; Const. 1 Islep. A.D. 1351; Ayliffe 419. See note 135, and *Acts in Judgment*, note 188.

(148). Innocent III. in Decret. Lib. v. Tit. XXXIV. c. 10.

laymen (149), although it may be voluntarily taken; nor could it ever be required unless a person was defamed not only among enemies and malicious persons (150), but also among good and grave men (151); neither may it be taken when the charge admits of proof (152). It may nevertheless be administered upon suspicion of an offence not grave in itself, if the same causes scandal (153).

40. In purgation the defamed person appears before the prelate or judge with the prescribed number of compurgators (154), two or three, but not more than six, in a case of alleged incontinence or lesser crime; seven or nine, but not more than twelve, in a case of alleged adultery or greater crime (155); and

(149). By 13 Car. II. c. 12, the oath *ex officio* cannot be required in any case where the party might, by virtue thereof, be compelled to confess, or accuse, or purge himself of any crime or the breach of any penal law. Lynd. 312; Law's Forms 46, 187, 282, notes.

(150). Innocent III. A.D. 1212, in Decret. Lib. v. Tit. I. c. 21.

(151). Const. 29 Langton, A.D. 1222; Ayliffe 449.

(152). Innocent III. A.D. 1208, in Decret. Lib. v. Tit. XXXIV. c. 15.

(153). Ayliffe 450: An enormous crime is said to be that which engenders and begets scandal, though otherwise it be not in itself enormous; for men ought to keep themselves free from all criminal imputations.

(154). Concil. Ilerd. ap. Gratian Caus. II. Qu. v. c. 13: It is a sufficient satisfaction if, according to the canons or at the bishop's will, he joins with himself seven colleagues, and swears upon the Gospel that he has not committed the crime alleged. Concil. Tribur. A.D. 895, *Ibid.* c. 15, requires a nobleman to purge himself with twelve, but "if he has previously been guilty of the same crime, let him not be admitted to the oath." Hincmar, *Ibid.* c. 16, requires a presbyter to purge himself with the required number of neighbouring presbyters (cum denominatis sibi vicinis presbyteris). Innocent III. in Decret. Lib. v. Tit. XXXIV. c. 12 assents to the principle that two bishops and three abbots would be enough for the purgation of a bishop, provided they could be got. Ayliffe 449 says that in this country the number is in the judge's discretion. Muratori Antiq. Diss. 38; Martene de Ant. Rit. Eccl. Lib. III. c. 7, § 3; Devoti Lib. III. Tit. IX. § 26.

(155). Innocent II. ap. Gratian Caus. II. Qu. v. c. 17 directs a bishop to purge himself with seven, viz., three (tertia manu) of his own order and four abbots. Concil. London, A.D. 1108, Can. 4: If any are accused by two or three lawful witnesses, or by public report, to have transgressed this statute [against concubinage], let him, if a priest, make hia purgation

swears upon the Gospels not only that he is innocent of the crime alleged, but also that he has not committed it (156). His compurgators then declare that they believe that what he says is the truth. As the object of purgation is not merely to show that crime is not proven, but to establish the innocence of the defamed person before all, it should be made in the place where the accused is defamed (157).

41. Compurgators ought to be persons of honesty and integrity, or at least persons tolerated by the Church, and not condemned for any crime (158), living in the neighbourhood (159), and personally acquainted with the defamed person (160); but their testimony is confined to stating that they believe his word (161). In default of his being able to procure such persons, he may produce as compurgators women and inferior laymen, so that they be tolerated by the Church, or his own kinsfolk (162).

by six witnesses, if a deacon by four, if a subdeacon by two. If he fail, let him be deemed a transgressor. Const. 10 Stratford, A.D. 1342: In enjoining purgations to such as are defamed, let bishops, archdeacons, or other ordinaries impose no more than six compurgators in case of fornication, or any such like crime; nor above twelve in case of adultery, or other greater crime, under pain of suspension from office.

(156). Innocent III. A.D. 1214, in Decret. Lib. v. Tit. XXXIV. c. 16: He asks to be allowed to swear that he is innocent of the crimes with which he has been charged, perhaps meaning innocent in the sense that they have been remitted by penance. . . . But if he will and can, let him swear that, according to the ordinary meaning of words, he has not committed those crimes with which he is charged, . . . since his promotion to the archbishopric, and let his compurgators swear that they believe what he says is true.

(157). Const. 10 Stratford, A.D. 1342: A man ought to make his purgation in the place where he was defamed. . . . Therefore we ordain that such as are defamed for crimes and excesses, but are willing to make their purgation, be not drawn from one deanery to another, or to country-places where necessaries of life are not to be found.

(158). Innocent III. to the Bishop of Winchester in Decret. Lib. v. Tit. XXXIV. c. 9.

(159). *Id.* A.D. 1202, *Ibid.* c. 11. Hincmar quoted, note 154.

(160). *Id. Ibid.* c. 7.

(161). *Id.* A.D., 1199, *Ibid.* c. 13. See note 156.

(162). Cnut's Law 5, A.D. 1017: If a minister of the altar that hath no friends be impleaded, and has none to support him in his oath, let him go

One who fails in a canonical purgation is deemed a transgressor ([163]), and may be dealt with as such.

to corsned, and be the event as God will, unless he be allowed to make his purgation on the Housel. If a man in orders be impleaded for a mortal feud, . . . let him make purgation with his kindred. Lynd 314 ; Ayliffe 451.

(163). Concil. London A.D. 1108, Can. 4, quoted note 155. Innocent III. in Decret. Lib. v. Tit. l. c. 23, and Tit. XXXIV. c. 7 and 10 : If he fails in purgation, smite him with the sword of ecclesiastical discipline.

## VIII.

## ACTS IN JUDGMENT.

1. Whenever any matter is submitted to the Church for decision, it is called a matter for settlement (*negotium*); and whenever there is any kind of opposition or difference as to the way in which it is to be settled, it is termed a disputed matter or controversy (*controversia*). A cause (*causa*), on the other hand, is defined to be that very right which is deduced and set forth in a judicial proceeding (1). Hence a matter for settlement or controversy may be disposed of either extra-judicially in synod or audience, or judicially by a judge; but there is no cause unless the matter is introduced before a judge, either for argument or for proof (2).

2. All the various steps whereby a controversy is discussed in judgment—such as a libel, contestation of suit, exceptions, depositions of witnesses, the assignment of a term (3)—are called the acts and members of the cause, and constitute what is also known as the process (4). These acts and members follow for the most part the usages of the civil law, and in this country are allowed to be valid on the ground of long usage

(1). Isidore in Decret. Lib. v. Tit. XL. c. 10 : A controversy when propounded is a *cause;* when it is discussed in judgment, a *judicial proceeding* (judicium) ; when it is decided, *justice.* Ayliffe 150. Schmalzgrueber in Craisson, § 5483, says that a controversy before it is propounded is a *question,* and the action whereby a controversy is brought to trial is a *suit,* and the carrying on of the action from contestation to sentence is the *instance.* Ayliffe 151. See *Canonical Procedure,* note 1.

(2). Isidore l. c. : Causa aut argumento aut probatione constat. Ayliffe 150 : A cause is so called before as well as after contestation of suit.

(3). Ayliffe 152 ; Law's Forms 76.

(4). Concil. Lat. IV. A.D. 1215, in Decret. Lib. II. Tit. XIX. c. 11 ; Ayliffe 149 ; Ecclesiastical Courts Commission, 1883, p. 183.

and custom (5). They may be arranged in three groups (6): (1) those which are concerned with the introduction of a cause while it is still in the stage of a matter for settlement or controversy. These are termed the preparatory acts (7), and are said to be in the forefront of judgment (*in principio judicii*) (8). (2) Those which are concerned with the instance of a cause when it has passed from the stage of controversy to that of a suit, and become judicial; and (3) those which have to do with the conclusion of a cause, and concern the exercise of the judge's office (9), including execution, or the stay of execution by appeal.

(5). See *Spiritual Courts*, § 8.

(6). Ayliffe 152; Devoti. Inst. Lib. III. Tit. XIII. § 4; Law's Forms 355.

(7). Ayliffe 181.

(8). Innocent III. to Archbishop of Canterbury in Decret. Lib. I. Tit. XXIX. c. 27, says a judge must take into consideration all the acts in a cause as well those [1] *in principio*, as [2] those *in medio*, and [3] those *in fine*. Law's Forms 77.

(9). The principal acts in a process are the following:—

THE CAUSE.

- *A.* The preparatory acts, acts in *principio* or *in jure*.
  - (1) Petition, or articles containing the libel.
    - (*a*) *Nature* of a libel.
    - (*b*) *Requisites* in a libel.

    *Summary information* before issuing a citation in a criminal cause.
    A civil cause may now be settled out of court by a *composition*.
  - (2) The citation, and the term citatory.
    - (*a*) Nature of a citation.
    - (*b*) Service of a citation.
    - (*c*) Certificate of service.
  - (3) Appointment of proctors, and bringing in of the libel or articles.
  - (4) Dilatory exceptions, and the term deliberatory.
    - (*a*) Exceptions to the citation.
    - (*b*) Exception to the judge.
    - (*c*) Exceptions to the libel.

    A criminal cause may now be settled by submission to sentence, a civil cause by a *compact* or *transaction*.
- *B.* The suit or discussion in judgment, acts *in medio* or *in judicio*.
  - (1) Contestation of suit, and the answer of the principal party.
  - (2) Peremptory exceptions.
    At this stage the oath of calumny may be administered.
  - (3) Assignment of the term probatory.
  - (4) The proofs.
    - (*a*) Degrees of proof.
    - (*b*) Production of witnesses by both parties.
    - (*c*) Publication of the depositions.
    - (*d*) Exceptions to the witnesses or their depositions.
- *C.* The concluding acts or acts *in fine*. The judge's office and appeal.
  - (1) Term to propound all acts.
  - (2) The sentence and the term definitive.
    - (*a*) Presumptions.
    - (*b*) The facts in evidence.

    The matter judicially settled (*res judicata*).
  - (3) Execution, and the term executory.
  - (4) Appeal, and the fatal terms.

For a fuller account of all the steps, see Arthur Brown's compendious view of the ecclesiastical law, 1796, and Law's Forms, p. 356.

3. A controversy introduced before a judge may be decided by him sometimes with, at other times without discussion in judgment. When it is decided without discussion in judgment it is said to be dealt with *summarily*, or rather extra-judicially, the procedure being similar to that pursued in an extra-judicial hearing in synod or in audience. By the law of this country there must, however, always be a libel in criminal causes, except in causes of contempt (10) or execution (11). When a controversy comes up for discussion in judgment, it must ordinarily be dealt with in a plenary manner, unless it is itself what is called a summary cause (12), *i.e.*, a cause which a judge is authorised to deal with as though it were a hearing in audience or in synod. Hence all causes, when they come to be dealt with on appeal before the highest court of all, become summary (13); for the highest courts, which by interpreting make the law, are not tribunals of judges, but of prelates.

### The Introduction of a Cause—The Controversy.

4. To introduce any matter for judicial settlement two things are necessary (14): (1) a petition (15) or supplicatory libel (16), called also an accusatory or criminal libel, and in this country popularly articles in a criminal case, a conventional libel in a

(10). Law's Forms 113.

(11). 2 Hen. v. St. i. c. 5, A.D. 1414, re-enacting the old common law rule: At what time the libel is grantable by the [common] law, that it may be granted and delivered to the party without any difficulty [to enable him to apply for prohibition if necessary]. See Ecclesiastical Courts Commission, 1883. Ayliffe 351 says summary proceedings may be taken upon a *viva voce* petition, called a petition *grosso modo*, when the process is *sine figura judicii*, but that some petition or other ought of natural right to be exhibited. See *Canonical Procedure*, note 26.

(12). See *Canonical Procedure*, § 9.

(13). Law's Forms, 42, 59.

(14). Ayliffe 174 calls the introducing of a controversy *editio actionis*.

(15). Gregory, A.D. 600, ap. Gratian Caus. ii. Qu. i. c. 7, calls it a *petition*. *Ibid.* Caus. vii. Qu. i. c. 3; Ayliffe 349.

(16). Ayliffe 346.

civil case (17); and (2) a citation by the judge having authority from the Church, calling upon the person cited to make answer to the libel or articles. According to the practice of the civil law there are several other acts which may have a place in the controversy stage (18); but of these only (1) contempt (19) and contumacy (20), (2) re-convention or counter-claim, (3) the administration of interrogatories (21), (4) security for proceeding or for costs, and (5) exceptions have place in ecclesiastical procedure.

5. A petition or supplicatory libel is a short and well-ordered writing (22), setting forth in a clear manner, as well to the judge as to the defendant, the plaintiff's intention in judgment (23). It has been also defined to be a fit conception of words setting forth a specimen of the future suit (24). It is the first step and the foundation of every suit, whether criminal or civil, and

(17). Gregory IX. in Decret. Lib. II. Tit. III. c. 3; Law's Forms 148.
(18). Ayliffe 152.
(19). Law's Forms 112.
(20). Law's Forms 121. See note 79.
(21). In Decret. Lib. II. Tit. VIII. c. 3, the defendants met a claim for payment of a pension which had been paid for three years and *upwards*, by interrogating as to the meaning of *upwards*, and the reply being seven years, asked to have the case adjourned on the ground that this was an alteration of the libel. Honorius III., on appeal, dismissed the defendants' application as frivolous.
(22). Ayliffe 351 says that the usual practice is for the citation to issue upon the petition, and a copy of the libel in the form of articles to be afterwards given to the defendant. See Law's Forms 154.
(23). Concil. Constant. A.D. 382, Can. 7, calls it λίβελλοι. Gratian Caus. II. Qu. VII. c. 1. Socrates II. 40 relates that when the Council of Seleucia in 359 A.D., condemned Cyril of Jerusalem *in absentia*, "he sent a written notification to those who had condemned him that he should appeal to a higher jurisdiction." VII. 37 relates that Sylvanus of Troas caused "the documents of the litigants [*i.e.*, the libel] to be delivered to himself." Alexander III. directs the Bishop of Exeter and the chapter of London, in Decret. Lib. II. Tit. I. c. 6, that it is not necessary to describe the particular kind of action, but only to set forth simply the facts of the case and the truth. Innocent III. *Ibid.* Tit. III. c. 2 requires the subject-matter of a real action to be set forth without obscurity or equivocation. Ayliffe 346.
(24). Law's Forms, p. 147.

is absolutely necessary in every plenary proceeding (25). In a criminal cause it must contain everything which is intended to be afterwards charged in the articles, the libel being interpreted in favour of the accused (26); in a civil cause the libel is interpreted in the plaintiff's favour. A libel is called *simple* when it declares the action in a continued speech, *articulate* when the merits of the cause are propounded in articles (27).

6. To be in proper form a libel must contain (28) (1) the name of the judge before whom the matter is to be brought; (2) the name and description sufficient for purposes of identification of the accuser, promoter, or plaintiff (29); (3) the name of the accused or defendant; (4) the offence charged, or the matter in demand or dispute, termed the *major proposition;* (5) particulars of the facts relied on to support the charge or complaint, called the *narration* (30); and (6) the *conclusion* or prayer. A libel is therefore a judicial syllogism. In a criminal cause there need be no prayer, since it is understood that the judge will decree as unto law and justice shall appertain (31); but in a civil cause the conclusion must state the particular

(25). Gratian Caus. II. Qu. VIII. c. 1; Concil. Suesson. II. A.D. 853, in Decret. Lib. II. Tit. III. c. 1; 2 Hen. V. St. I. c. 3, and 2 and 3 Ed. VI. c. 13–14 require a copy of it to be delivered to the defendant. Law's Forms 150. No libel existing proceedings are rendered null. See *Procedure*, note 25.

(26). Ayliffe 352.

(27). Law's Forms 148; Craisson, § 5882.

(28). The five points necessary for every libel are commemorated in the lines from Hostiensis, quoted in Law's Forms 149, and there rendered :—

The plaintiff's and defendant's name,
And eke the judge who tries the same;
The thing demanded, and the right whereby
You claim to have it granted instantly—
He doth a libel right and well compose
Who forms the same, omitting none of those.

(29). *Griffith* v. *Williams*, No. 177, in Rothery's Ecclesiastical Appeals.

(30). Innocent III. in Decret. Lib. II. Tit. XXVIII. c. 49. Gregory IX. *Ibid.* Tit. III. c. 3 says that unless the ground of the demand as well as the demand is set forth in a civil case, the defendant cannot be called upon to answer. Lynd. 301.

(31). Lynd. 125, 297 : Videbitur expedire. Ayliffe 349.

remedy or redress asked for to enable the judge to give the proper relief (32). In so doing it must be careful not to ask for too much, to be too specific (33), to ask for redress prematurely or at a wrong place (34), and ought to be, as the civilians say, round, dilucid, conclusive; and neither obscure, uncertain, general, or alternative (35). Otherwise the plaintiff may be condemned in costs.

7. In a civil cause, and also in a criminal cause in which the plaintiff is seeking redress for a private wrong (36), the citation ought to issue as a matter of natural right and justice (37), except in appealing against a sentence of excommunication; for in such cases the appellant must first pray for absolution (38). But since it is not incumbent on a judge to allow his office to be promoted for public vengeance without good grounds for

(32). Ayliffe 349.

(33). Gregory IX. in Decret. Lib. II. Tit. XI. says that for asking too much, *i.e.*, twenty shillings when only ten shillings are due, or for asking too specifically (causa), *i.e.*, some specific thing when the mode of performance is in the defendant's choice, or for asking for a debt before the time for payment, the plaintiff should be condemned in costs.

(34). For asking too soon the defendant is allowed additional time, and for asking at the wrong place the defendant is allowed to counterclaim for his loss by the difference by Gregory IX. *Ibid.*

(35). Ayliffe 346 says a libel must avoid five things: Generality, obscurity, ambiguity, conditionality, and disunity. Conset's Practice 402; Law's Forms 148.

(36). Concil. Carthag. III. A.D. 397, Can. 7 ap. Gratian Caus. IV. Qu. VI. c. 1: It is resolved that when any one commences proceedings before the committee of bishops (in judicio episcoporum), if the person of the accuser has been guilty, he be not heard, unless in private causes, not in ecclesiastical or criminal causes. Concil. Carthag. VII. A.D. 419, Can. 2, *Ibid.* c. 2: All who are excluded from accusation must not be prevented from accusing in their own causes. This right seems to be preserved by sec. 19 of 3 & 4 Vict. c. 86.

(37). Before 26 Otho, A.D. 1268, quoted note 67, the plaintiff could himself serve the libel on the defendant without the judge's intervention, and even compel him to appear unless he found bail. See Devoti Lib. III. Tit. V. § 8; Ayliffe 180, 274: To convene and commence a suit against a party ought to be denied to no one.

(38). Innocent III. A.D. 1202, in Decret. Lib. V. Tit. XXXIX. c. 40; Boniface VIII. in Sext. Lib. V. Tit. XL. c. 7; Law's Forms 86.

believing that such promotion will be for the public good, a criminal suit in the interest of the Church cannot be instituted without the judge's consent (39). Before giving such consent it is his business to satisfy himself by summary information (1) that there are *prima facie* grounds for believing the charges made to be true (40); and (2) that the accused is publicly defamed (41). Otherwise the judge is forbidden to allow his office to be promoted (42).

8. A citation is a judicial act whereby a defendant is summoned to appear before a judge, deputed by the Church, on a certain day, to make answer to the plaintiff's or promoter's libel (43). It ought, therefore, to be directed to all who are concerned in the cause as defendants (44); but the same citation may not include the names of more than four persons (45), and by English rule a separate citation must be issued to each person, or the stamp duty would be evaded (46). A citation should contain (1) the name of the judge, and his commission if he be a delegate with special powers; also (2) the style of the court wherein he presides, lest a defendant should be com-

(39). By 3 & 4 Vict. c. 86, and the Public Worship Act, 1874, the allowing the promotion of any criminal suit is left in the bishop's discretion. Several witnesses complained before the Ecclesiastical Courts Commission, 1883, vol. II. 62, 171, 235, that this was an injustice, on the ground that to have public worship conducted in the way prescribed by the Act of Uniformity is a private right.

(40). Innocent IV. in Sext Lib. III. Tit. XX. c. 1, § 4, says this of the archbishop when holding a visitation. Lynd. 109, says this informal inquiry is not upon oath.

(41). Innocent III. in Decret. Lib. V. Tit. I. c. 21, § 2, and c. 19; Boniface VIII. in Sext. Lib. V. Tit. I. c. 2.

(42). Innocent III. A.D. 1206, in Decret. Lib. V. Tit. I. c. 19: Unless you find that his reputation has suffered from the above charges, do not hastily proceed to a judicial inquiry into their truth. *Id.* A.D. 1212, *Ibid.* c. 21: No one ought to be [publicly] punished for a crime which has not damaged his reputation. Concil. Lat. IV. A.D. 1215, Can. 8, *Ibid.* c. 24.

(43). Ayliffe 174; Law's Forms 79, 87.

(44). Lynd. 254: All who have an interest must be cited when a matter is raised to their prejudice. Can. 120 of 1603; Gibson's Codex 1009.

(45). Ayliffe 181.

(46). Law's Forms 88.

pelled to appear and plead in more courts than one on the same charge (47); (3) the name of the plaintiff or promoter; (4) the name of the defendant or accused; (5) the cause or subject-matter of the suit or complaint; (6) the place where the defendant is to appear, which is required to be some safe place (48) within the territorial limits of the citing judge's authority (49); and (7) the day of appearance, a competent interval or term being allowed, such as ten days, according to Roman law, for a simple, or thirty days for a peremptory citation (50).

9. The day or time of appearance is settled by the judge (51) In the time of the Court of Arches it used to be the next court day after the third day for those living in the city of London or suburbs, and after the fourth or sixth day for those living farther off, according to distance (52). The judge ought to take care that it is not too short (53). When, as is now necessarily

(47). Law's Forms 87.

(48). Innocent III. to Bishop of Worcester in Decret. Lib. II. Tit. XXVIII. c. 47. *Id. Ibid.* Tit. VI. c. 4. If it is not a safe place there is ground for appeal, according to Boniface VIII. in Sext. Lib. V. Tit. XL. c. 7.

(49). Concil. Vien. A.D. 1311, in Clem. Lib. II. Tit. XI. c. 2; Ayliffe 176. By the statute 23 Hen. VIII. c. 9, and 3 & 4 Vict. c. 86, sec. 19, no one may be cited out of his diocese. But during the vacancy of any episcopal see within the province of Canterbury, the Archbishop as ordinary (except in the dioceses of London, Lincoln, Salisbury, and Worcester—*Oughton*) may cite into his court. Law's Forms, p. 54.

(50). Concil. Carthag. III. Can. 7, A.D. 397, ap. Gratian Caus. IV. Qu. V. c. 1, says one month. Pseudo-Isidor. *Ibid.* Caus. V. Qu. II. c. 2, allows seven days, then another seven, then two, then two more, and a day of grace, after which it allows the defendant to be excommunicated for contumacy. Gratian Caus. III. Qu. III. c. 4, § *Offeratur*, says twenty days. Innocent III. in Decret. Lib. II. Tit. XIV. c. 6; Const. 14 Peckham A.D. 1281; the possessor being first lawfully cited, and so much time allowed him as may be sufficient for consulting with wise men and providing for the defence of his estate Ayliffe 178 states that a citation without assigning a term is valid, the defendant's duty being then to appear so soon as he can.

(51). Concil. Vien. A.D. 1311, in Clem. Lib. II. Tit. I. c. 1; 3 & 4 Vict. c. 86 allows fourteen days in criminal cases.

(52). Law's Forms, p. 89.

(53). Alexander III. to the Archbishop of Canterbury and Bishop of Worcester in Decret. Lib. II. Tit. VIII. c. 1; Innocent III. *Ibid.* Lib. I. Tit. XXIX. c. 24, and Tit. XLI. c. 4.

the custom, a fixed day of appearance is decreed in the provincial court, the citation is called a citatory decree (54). No citation ought to issue except at the instance of some party as promoter, except the judge is proceeding extra-judicially of mere office (55), nor ought one to be decreed on a principal holiday, though it may be served on one (56). If it fails in any one of these particulars, exception may be taken to it as invalid.

10. By mediaeval rule a citation may be either (1) simple or (2) peremptory. A simple citation must be thrice repeated before a defendant can be deemed contumacious (57). In an extra-judicial matter a single citation suffices (58). A peremptory citation is a form of citation which has been introduced as a substitute for three simple citations. It must therefore (1) express that it is peremptory (59), and (2) must allow an interval of time equal to three simple terms (60), which

(54). *Ibid.* p. 86, 90.

(55). Ayliffe 177, 180 says that there are three exceptions: (1) when the party appears without objecting; (2) when the judge perceives that the instance of the party perishes; (3) when the cause concerns the public good.

(56). Concil. Tarracon. A.D. 516, Can. 4 ap. Gratian Caus. XV. Qu. IV. c. 1, and Labbé v. 693: That no bishop, presbyter, or clerk dare to judge any matter brought before him on the Lord's Day. Gregory IX. in Decret. Lib. II. Tit. IX. c. 5; Ayliffe 178.

(57). Hincmar of Rheims, A.D. 850, ap. Gratian Caus. XXIV. Qu. III. c. 6, states that Nestorius was thrice cited by Coelestin and the Synod of Ephesus, A.D. 431. See *Spiritual Courts*, note 9. Concil. Milev. A.D. 402, Can. 16, recites that the accusers had been thrice cited, and failed to appear. Concil. Chelsea A.D. 816, Can. 6: If any one be summoned to synod by his plaintiffs, and do not delay to meet them at the first, second, or third call, being ready to give an account of himself, but the plaintiff flinches, . . . let nothing further be done. Concil. Winton A.D. 1076, Can. 4: If laymen are accused of any crime, and will not obey the bishop, let them be summoned three several times. William's mandate, A.D. 1085: If any one refuse to come to the bishop's court, let him be summoned three several times. Innocent III. to Archbishop of Armagh in Decret. Lib. II. Tit. XIV. c. 7; Law's Forms, 91.

(58). Ayliffe 180.

(59). Innocent III. in Decret. Lib. II. Tit. XIV. c. 6; Lynd. 82, 114, 218. It is sometimes called an authority.

(60). Alexander III. to Archbishop of Canterbury in Decret. Lib. II. Tit. VIII. c. 1; Innocent III. *Ibid.* Lib. I. Tit. XXIX. c. 24, and Tit. XLI. c. 4; Ayliffe 179.

is called a term peremptory (61). According to their subject-matter, citations are also called (1) *peremptory*, when they contain a definite command to appear; (2) *mandatory and inhibitory*, when they forbid a judge to proceed further, or a party in a matrimonial cause to enter into a fresh contract of marriage until the suit is decided; or (3) *mandatory and intimatory*, when they intimate to the parties cited that if they do not appear, proceedings will go on in their absence. They are also called (1) *general*, when they cite to attend the whole course of proceedings; or (2) *special*, when they cite to perform some particular act; or, again, (1) *public*, when they are executed by a public writing in Church; or (2) *private*, when they are verbally executed, or by notice left at the defendant's house; and, lastly, (1) *personal*, when they are directed to persons; or (2) *real*, when they are executed upon specific goods, as upon a ship in a maritime cause (62).

11. By the rule of the Fourth Lateran Council, no one can be cited to appear at a place more than two days' journey beyond the limits of the citing authority's jurisdiction (63); nor, in this country, can any one be cited to appear outside his diocese, except into the provincial court (64), and that only (1) during the voidance of an episcopal see of which the archbishop is the superior ordinary (65); (2) if a suit is instituted against a bishop, archdeacon, or any official, for an excess committed or a neglect of duty; (3) in a cause of appeal; (4) on complaint of a grievance against the prelate or official before whom a suit is pending; (5) when a bishop or other immediate judge dares not or will not proceed; (6) when an ordinary or judge has, or pretends to have, an interest in the suit; (7) when an ordinary or judge voluntarily renounces his jurisdiction, or passes it on by letters of request; and (8) when the suit relates to some matter

(61). Gregory IX. in Decret. Lib. II. Tit. VIII. c. 4; Ayliffe 180.

(62). Law's Forms, p. 80, 89.

(63). Can. 37, A.D. 1215, in Decret. Lib. I. Tit. III. c. 28; Honorius III. *Ibid.* Lib. II. Tit. XXV. c. 7; Ayliffe 181.

(64). 23 Hen. VIII. c. 9; 3 and 4 Vict. c. 86, sec. 19.

(65). Law's Forms 55; see note 49.

which is already being dealt with by a higher court (66), as a legacy in probate cases.

12. Before any citation can have effect, it must be brought to the knowledge of the person cited, or, as it is said, be served upon him; and its effect dates not from the time of issue, but from the time of service. A citation may not be served by the person at whose instance it was granted, but only by the judge or some official acting for him (67). Service may, however, be effected in one of three ways, viz.—(1) personally (*denunciatione*); (2) by a writing (*literis*), in the manner called by ways and means (*viis et modis*); or (3) by proclamation *edicto* (68). Personal service is effected by showing the original citation, explaining its contents, and giving the person cited a copy, if he asks for one; or by giving the same to his proctor, or to some member of his family (69). When personal service cannot be effected, the judge may decree the citation to be affixed to the door of his house, or to the Church door during the time of divine service, and a copy left there. This is termed service by ways and means (*viis et modis*) (70). Citations by proclamation

(66). Law's Forms 81.

(67). Const. 26 Otho, A.D. 1237: That letters of summons be not sent by such as obtain them, or by their messengers, but that the judge send them by his own faithful messenger, at the moderate expense of him who obtained them. Const. 25 Othobon, A.D. 1268; Const. 3 Mepham, A.D. 1328; Const. 7 Stratford, A.D. 1342, says citations should be served by officials, deans, apparitors, or other their ministers, but not by rectors, vicars, or parish priests. Lynd. 81, 87.

(68). Devoti Inst. Lib. III. Tit. v. § 13 calls them *denunciatione, literis, edicto.* Law's Forms 89.

(69). Alexander III. to Bishops of Exeter and Winchester in Decret. Lib. II. Tit. XIV. c. 3, says that if a man has left the country the citation may be made on his proctor, or, if he has left no proctor, *denunciationibus ad domum ejus missis.* Law's Forms 91; Craisson, § 5898.

(70). Gregory IX. in Decret. Lib. II. Tit. XIV. c. 10; Const. 26 Otho, A.D. 1237: We hear that men obtaining letters of summons send them forth by three vile messengers, two of whom put up the letters over the altar or in some other place, and the third presently takes them away. Ayliffe 177 states that a citation ought to be served at the place where a person dwells. Law's Forms 97. See *Spiritual Courts*, note 161.

(*citationes edictales*) are those not confined to any one person, but directed to all who have an interest in the cause.

13. Before any proceeding can be founded on the defendant's non-appearance, the service of the citation must be proved (71). The proof of service of the citation is the first judicial act in a cause after the citation. So absolutely essential is the citation as the beginning and foundation of every judicial proceeding, that every judicial act exercised against a person not cited, or not cited to answer the particular matter named in it, is null and void *ipso jure* (72). On the other hand, the service of the citation at once produces three effects: (1) It pledges the defendant to appear, otherwise he is contumacious (73). (2) It perpetuates the jurisdiction of a judge-delegate until he becomes aware of the death of his principal (74), or until the suit is disposed of, if contestation of suit has already taken place (75). (3) It creates a pending suit (76), so far as to prevent the matter in dispute being dealt with in any way (77), although it creates no pending suit against the defendant until he contests

(71). Gregory IX. in Decret. Lib. II. Tit. XV. c. 4; Lynd. 200; Ayliffe 180; Law's Forms 99.

(72). Ayliffe 176.

(73). Alexander III. to Abbot of Ramsay and Archdeacon of Ely in Decret. Lib. II. Tit. XIV. c. 2.

(74). Urban III. *Ibid.* Lib. I. Tit. XXIX. c. 20.

(75). Lucius III. *Ibid.* c. 19 states that the office is not perpetuated until contestation. Ayliffe 155.

(76). Concil. Vien. A.D. 1311, in Clem. Decret. Lib. II. Tit. V. c. 2; Lynd. 278, 115: There is said to be a judicial proceeding (*judicium*) so soon as the citation has been served. Ayliffe 153: Though it may be styled *lis* or suit before contestation of suit, yet it cannot be said to be *lis mota* or pendency of suit till afterwards. Therefore, before contestation of suit, the defendant is not *in mora*. But a libel offered to the prince effects a pendency of suit. . . . But a pendency of suit in respect of the plaintiff is induced *ex sola commissione*, or by the judge's decree for citing the defendant. *Ray* v. *Sherwood*, 1 Curt. 217, in Stephens' Eccl. Stat. 1651.

(77). Gelasius A.D. 494, ap. Gratian Caus. XI. Qu. I. c. 50; Alexander III. to Archbishop of York in Decret. Lib. II. Tit. XVI. c. 1; Innocent III. *Ibid.* c. 2. Honorius III. *Ibid.* Tit. XXVIII. c. 69 allows that for the judge to alter the matter involved in a suit before contestation is a good ground of appeal. Ayliffe 151.

it (78), because he may never contest it. In addition, (4) in a civil cause it breaks a prescription. A citation in itself invalid, becomes valid if the defendant appears to it.

14. If the defendant either does not appear to the citation, or appears and goes away before the cause is heard and determined, or is disobedient to a ruling of the judge (79), he is said to be contumacious; and unless he is able to excuse his contumacy as being apparent only and not real, he cannot be heard in judgment (80). In a criminal cause the evidence may be taken and the defendant condemned in his absence (81) after it is shown that he is, and he has been pronounced to be contumaciously absent (82). In a civil cause the judge does not pronounce the defendant contumacious except on the petition of the plaintiff (83), but he may hear evidence and give a preliminary sentence in the plaintiff's favour, which, unless appealed against, becomes definitive at the end of a year (84).

(78). Honorius III. in Decret. Lib. v. Tit. XL. c. 30.

(79). Concil. Milev. A.D. 416, ap. Gratian Caus. II. Qu. VI. c. 19: Whoever contumaciously refuses to obey the judges, after this has been proved to the primate, let him issue letters that no bishop may communicate with him until he obeys. Concil. Tribur. *Ibid.* Caus. XI. Qu. III. c. 43: For these three crimes any one may be lawfully excommunicated—refusing to come when canonically summoned to synod [*i.e.*, court], or when there refusing to obey sacerdotal precepts, or presuming to leave the synod before the final conclusion of the cause. Alexander III. to Bishops of Exeter and Winchester in Decret. Lib. II. Tit. XIV. c. 3.

(80). Lynd. 114 says that contumacy may be either apparent or real. In both cases the contumacy prevents the defendant being heard by the judge of first instance, but the judge of appeal may hear him for the purpose of deciding that his contumacy was not real. See Gratian Caus. IV. Qu. V. c. 1. If the defendant changes his forum after being served with the citation, he is still liable to answer before the citing judge. Decret. Lib. II. Tit. II. c. 19; Innocent III. *Ibid.* Lib. II. Tit. XXVII. c. 18.

(81). Innocent III. in Decret. Lib. II. Tit. XIV. c. 8, and Tit. VI. c. 5, § 8. This is not allowed in a matrimoniul cause when the respondent is not contumacious. *Ibid.* Lib. II. Tit. VI. c. 4; Ecclesiastical Courts Commission, 1883, I. 197, and II. 189.

(82). Craisson, § 5903.

(83). Innocent III. A.D. 1203, to the Bishop of Durham, in Decret. Lib. I. Tit. XX. c. 34.

(84). Concil. Lat. IV. A.D. 1215, Can. 40, in Decret. Lib. II. Tit XIV. c. 9,

15. If the defendant appears, he may do so under protest, or to take exception ([85]) either (1) to the citation, as being defective, uncertain, or ambiguous ([86]); (2) to the judge, as not being a judge of competent jurisdiction, or as being suspect ([87]); (3) to the plaintiff, as being disqualified ([88]), or to his proctor as having no sufficient mandate ([89]); or (4) to the admission of the libel in whole or in part—in whole when the facts alleged will not support the conclusion, in part when some of them are irrelevant, or could not be proved by evidence, or involve matter at the time pending before another tribunal ([90]). Such exceptions are called dilatory, because they delay the plaintiff's intention in judgment, and prevent the controversy becoming

directs the plaintiff to be put in possession as custodian for a year, and directs a final judgment to be then passed constituting him true possessor; and Tit. VI. c. 5, § 6.

(85). Decret. Lib. II. Tit. XXV. Sext. Lib. II. Tit. XII.; Ayliffe 252; Law's Forms 167 and 69; Apost. Const. II. 49 names some of these exceptions. Ecclesiastical Courts Commission Report, p. 197.

(86). Ayliffe 252, when it is not known who is the person intended to be cited; Ayliffe 176, or for any other defect in the citation. Innocent III. in Decret. Lib. II. Tit. XXVIII. c. 49, says it is good ground for appeal if the defendant's request to have the piece of land demanded in a libel identified is refused.

(87). See above, *Spiritual Courts*, § 29. Socrates I. 31 relates that Athanasius took exception to the jurisdiction of the Council of Tyre in 335 A.D.—(1) on the ground that Eusebius and his party, who sat in it, were his enemies, and (2) that Ischyras his accuser, described in the libel as a presbyter could not be proved to be one; and when the Council disallowed the exceptions he appealed to the Emperor. Concil. Lat. IV. A.D. 1215, in Decret. Lib. II. Tit. XXVIII. c. 61 and 41. According to Alexander III. *Ibid.* c. 6 and 24, exception cannot be taken to a judge because the defendant has in a previous suit appealed from a sentence of his. Ayliffe 252: It is held that a judge can himself decide the question of his jurisdiction, subject of course to appeal, but that he cannot decide the question of being suspect. Craisson, § 5911.

(88). Because of being excommunicated, under age, outlawed, and the like. Devoti of Lib. III. Tit. X. c. 7; Ayliffe 252, 254.

(89). Innocent III. to the bishop, dean, and precentor of Hereford, in Decret. Lib. II. Tit. XXVIII. c. 48.

(90). Law's Forms, 169; Ecclesiastical Courts Commission, 1883, Hist. App. I. 197.

a suit (91); they form the subject of argument, and the refusal to admit them is good ground of appeal (92).

16. All dilatory exceptions, unless it be that of the greater excommunication (93), which may be alleged at any time (94), ought to be made before contestation of suit (95). They may nevertheless be made afterwards if (1) the defendant has reserved his right of making them by protest; (2) if they have since cropped up; or (3) have been since discovered (96); but if exception is not taken at once to the judge's jurisdiction, the defendant is deemed to have consented to it (97). The first thing, therefore, which the judge has to do when the defendant has appeared, is to fix the term deliberatory, within which dilatory exceptions must be propounded (98). At the expiration of this term, if no exceptions have been made or sustained, he decrees the admission of the libel, and the controversy is then ripe for discussion in judgment.

17. Besides taking exception to the libel and citation, the defendant can also, in some cases, protect himself by making a counter-claim (*mutua petitio* or *reconventio*) (99). This he may

(91). Gratian Caus. III. Qu. VI. c. 2; Innocent III. to Bishop of Ely in Decret. Lib. II. Tit. XXV. c. 4, and Tit. XXVIII. c. 62; Ayliffe, 252; Law's Forms, 167.

(92). Innocent III. in Decret. Lib. I. Tit. XXIX. c. 27, § 5, and Lib. II. Tit. XXVIII. c. 48; Ecclesiastical Courts Commission 1883, I. 183.

(93). Concil. Lugdun. A.D. 1274, in Sext. Lib. II. Tit. XII. c. 1, forbids this exception to be made unless the kind of excommunication is specified and the name of the excommunicating judge, and the same proved within eight days. Innocent III. to the archdeacon of Richmond, *Ibid.* Tit. XXV. c. 2, says that this exception cannot be rebutted by alleging that the defendant has ignored the excommunication.

(94). Gregory IX. in Decret. Lib. II. Tit. XXV. c. 12; Concil. Lugdun. A.D. 1245, in Sext. Lib. II. Tit. XII. c. 1.

(95). Innocent III. *Ibid.* Lib. II. Tit. XXVII. c. 20; Ayliffe, 252.

(96). Innocent III. *Ibid.* Lib. I. Tit. XXIX. c. 21 and 25; *Id.* to the Bishop of Ely, *Ibid.* Lib. II. Tit. XXV. c. 4, quoted note 126.

(97). See *Spiritual Courts*, § 30.

(98). Innocent III. to Bishop of Ely, l. c.

(99). Devoti Lib. III. Tit. XI. § 4, in Decret. Lib. II. Tit. IV.; Sext. Lib. I. Tit. III. c. 3.

do, provided he is not excommunicate (100), by reconvening the plaintiff before the same judge, or by separate action if the judge is suspect (101). By reconvening him before the same judge, he acquiesces in the judge's jurisdiction, but, on the other hand, he secures the simultaneous settlement of claim and counter-claim (102), provided the reconvention or counter-claim is made before, or immediately after, contestation of suit (103).

18. As the object of counter-claim is to secure an allowance or compensation (104) by way of set-off, reconvention is not possible whenever compensation is not possible. There can therefore be no reconvention (1) in criminal causes (105) in which the accused must be acquitted on the ground of his innocence, not on the ground of his being less guilty than his accuser; (2) in prejudicial causes (106), because a prejudicial exception peremptes the principal matter; (3) in causes of breach of trust (107); and (4) in causes of wrongful dispossession (108). Moreover, no one can reconvene another who could not support an independent action himself (109), nor can one reconvene another before arbitrators (110), but a judge delegate can entertain counter-claims (111). Reconvention is always made on exactly the same footing as the original action (112).

19. Before contestation of suit a controversy may be with-

(100). Innocent III. in Decret. Lib. II. Tit. XXV. c. 5.

(101). Concil. Lugdun. A.D. 1245, in Sext. Lib. I. Tit. III. c. 3.

(102). Alexander III. in Decret. Lib. II. Tit. IV. c. 1.

(103). *Id. Ibid.* Craisson, § 5922.

(104). Devoti Lib. III. Tit. XI. § 4.

(105). Lib. IX. Cod. Tit. 1. c. 19 ap. Gratian Caus. III. Qu. XI. c. 2 and 4.

(106). Clemens III. in Decret. Lib. II. Tit. X. c. 1.

(107). Gregory IX. in Decret. Lib. III. Tit. XVI. c. 2.

(108). Innocent III. in Decret. Lib. II. Tit. X. c. 2. Pseudo-Isidor. ap. Gratian Caus. III. Qu. 1. c. 1, 2, 3.

(109). Innocent III. in Decret. Lib. II. Tit. XXV. c. 5.

(110). Innocent III. in Decret. Lib. I. Tit. XLIII. c. 6.

(111). Alexander III. *Ibid.* Lib. II. Tit. IV. c. 1.

(112). Coelestin III. A.D. 1193, in Decret. Lib. II. Tit. IV. c. 2. Thus if the citation is made *appellatione remota*, the reconvention is also *appellatione remota*, although this is not expressed.

drawn from judgment except in a matrimonial cause (113). The withdrawal from a criminal proceeding is termed *abolitio*, and is not permitted except by leave of the judge, unless it be to avoid bloodshed (114). Such a withdrawal by the accuser bars him from again raising the same charge (115). A withdrawal by the accused is equivalent to an admission of guilt, and he may be dealt with accordingly (116). The withdrawal or settlement of a civil controversy is a thing which a judge is directed to encourage (117). If made gratuitously, it is termed a *composition* (118); if made upon terms the value of which has been already ascertained in judgment, a *compact* (119); if made upon terms the value of which is unascertained, but made with the sanction of the court, a *transaction* (120).

(113). Honorius III. in Decret. Lib. I. Tit. XXXVI. c. 11.

(114). Gratian Caus. II. Qu. I. c. 7, § 2, *Ibid.* Qu. III. c. 8; says that to make a false charge is called *calumniation*, to conceal the truth *prevarication*, and generally to desist from prosecution *tergiversation*. Lynd. 73. See *Canonical Procedure*, note 81.

(115). Innocent III. in Decret. Lib. V. Tit. I. c. 4.

(116). *Id. Ibid.* If the judge finds that the accused is criminous, and that the withdrawal is made by collusion, let the accused receive the legal punishment.

(117). Pseudo-Isidor. ap. Gratian Caus. II. Qu. VI. c. 18, permits a man to withdraw from a suit. Honorius III. in Decret. Lib. I. Tit. XXXVI. c. 11, urges a judge to use every endeavour to bring about compositions, even abating for that purpose from legal severity, excepting always matrimonial causes, which do not admit of a composition. Const. 28 Langton, A.D. 1222: That archdeacons or their officials give leave to the parties to agree or withdraw by compounding, so that the suit be such as admits of composition. Const. 21 Otho, A.D. 1237.

(118). Alexander III. in Decret. Lib. I. Tit. XXXVI. c. 7.

(119). *Pactum* or *pactio*. Concil. Carthag. I. A.D. 347, in Decret. Greg. IX. Lib. I. Tit. XXXV. c. 1.: Either let compacts be observed, or let the defendant be amenable to ecclesiastical discipline. Alexander III. to Bishops of Exeter and Worcester, *Ibid.* c. 4, forbids a compact for the resignation of a benefice. *Id.* to the Archbishop of York, *Ibid.* c. 5; *Id.* to the Archbishop of Canterbury, *Ibid.* c. 6, forbids a Church to be given under a compact for an increased pension. Coelestin III. to Bishop of Lincoln in Decret. Lib. V. Tit. III. c. 28, also Tit. XL. c. 12; Law's Forms 160.

(120). Gregory, A.D. 599, in Decret. Lib. I. Tit. XXXVI. c. 1. Devoti Inst.

20. A libel may be sometimes changed, as if an estate demanded under a will is demanded under a contract; and sometimes mended or enlarged, as if instead of a debt of £10 one of £20 is claimed. With certain exceptions (121) a libel can be changed in a civil cause before contestation of suit, but not in a criminal cause, and by English practice the plaintiff in a testamentary cause is allowed to make three allegations, but not more (122). A libel can also be enlarged by the addition of new matter, but substantial matter can only be added before contestation of suit (123). Therefore since time and place are considered substantial matters in a criminal cause, the omission of them in a criminal libel cannot be afterwards rectified. On the other hand, the conclusion or petition being accounted the substantial matter in a civil cause, additions are permitted to any part of a civil libel except the conclusion, even after contestation of suit; and in universal actions such as suing for an inheritance, or general actions such as an action for waste, additions may be made in the way of specifying particulars, even up to the time of giving sentence.

21. The period of time which is allowed to intervene, either by law or by the judge's ruling before any judicial act is concluded, is called a delay-term (*dilatio*). Any additional allowance of time at the request of either of the parties is termed an extension of time (*induciae*) (124). Terms are allowed by law at each stage of a judicial proceeding, and extensions of time may be had when they are necessary. There

Lib. III. Tit. XVIII. says that pactio is the generic term of which transactio is one species. Ulpianus in leg. 1 de Transac.: Qui transigit quasi de re dubia et lite incerta neque finita transigit; qui vero paciscitur donationis causa rem certam et indubitatam liberaliter remittit. Law's Forms 162.

(121). *Ibid.* 166.

(122). Ayliffe 350; Law's Forms 180.

(123). Law's Forms 166. See *Spiritual Courts*, note 101.

(124). Pseudo-Isidor. ap. Gratian Caus. III. Qu. III.; Coelestin III. A.D. 1193, in Decret. Lib. II. Tit. VIII. c. 2; Honorius III. *Ibid.* c. 3, and Tit. XXVIII. c. 62.

are two regular terms in the introduction of a cause, for which a fixed time is set by law or by custom, viz. (1) the term citatory ([125]), or the interval allowed before appearance to the citation becomes obligatory; and (2) the term deliberatory ([126]), or the interval allowed to the defendant after appearing to the citation, to deliberate whether he has any exception to propound before the judge decrees the admission of the libel.

### The Instance of a Cause—The Suit.

22. When the judge has decreed the admission of the libel or articles, and the controversy is thereby allowed to be a fit matter for discussion in judgment, the first and necessary act is contestation of suit or joining of issue, and the acts which follow it are called the suit (*lis*) or trial. All the proceedings that took place before were said to be acts in law (*in jure*); all that now take place are said to be acts in judgment (*in judicio*). The suit proper includes three things: (1) contestation of suit or joining of issue; (2) the ordering of the investigation upon the allegations made, and the exceptions pleaded ([127]); and (3)

(125). Alexander III. to the Archbishop of Canterbury and Bishop of Worcester in Decret. Lib. II. Tit. VIII. c. 1, forbids too short a term to be allowed in the citation.

(126). Coelestin III. A.D. 1193, in Decret. Lib. II. Tit. VIII. c. 2. Innocent III. A.D. 1204, to the Bishop of Ely, *Ibid.* Tit. XXV. c. 4: Since the termination of causes is sometimes maliciously delayed, in answer to your inquiry we decree that within a certain time to be assigned by the judge, all dilatory exceptions must be propounded, so that if afterwards they wish to allege them, they shall not be heard unless [1] they had before made protest, unless [2] by chance some new and valid one should arise, or [3] he who wishes to allege one first makes oath that it has subsequently come to his knowledge.

(127). According to Clemens v. in Clem. Lib. v. Tit. XI. c. 2, the original libel should be divided into positions or sections, called *allegations* in a civil cause, *articles* in a criminal cause. In a civil cause the plaintiff *alleges and propounds* what is contained in them, in a criminal cause the judge *articles and objects.* See Ecclesiastical Courts Commission, 1883, vol. II. 207. In a civil cause the plaintiff may put in three allegations or pleadings amending the libel, and the defendant may reply to each. Law's Forms 179.

the judicial production of the evidence in support of the libel and exceptions called the proof.

23. The instance of a suit is said to commence when a controversy is judicially contested, and to last until sentence is given, or till the end of three years ([128]). For contestation three things are necessary: (1) There must be an allegation of crime or statement of claim made by an accuser or plaintiff, and an answer or defence made by a defendant or accused person. (2) The allegation must be made by way of petition before a judge, and the answer by way of direct reply to it. (3) The answer must be made with intent to invite a judicial decision ([129]). The answer may, however, be (1) simply affirmative, or (2) simply negative, or (3) affirmative or negative with a qualification ([130]).

24. Before a suit is contested there can be no judicial examination of witnesses, except in cases where the death of a witness may be apprehended, or else to perpetuate evidence ([131]), because

(128). Ayliffe 151: The instance of a cause is said to be that judicial process which is made from the contestation of a suit, even to the time of pronouncing sentence in the cause, or till the end of three years. Honorius III. in Decret. Lib. v. Tit. XL. c. 50: Lis dicitur mota cum fuerit contestata Lynd. 162: Res est litigiosa post litem contestatam. Ayliffe 150: A lis or suit is the cause itself deduced in judgment. . . . A *lis* or suit does not commence but from contestation of suit. Devoti Lib. III. Tit. VI. § 3 says that by the civil and canon law the usual time allowed before contestation of suit is twenty days. Lynd. 72 says that it must take place within two months, appealing to Concil. Carthag. III. A.D. 397, Can. 7 ap. Gratian Caus. IV. Qu. v. c. 1, which requires an incriminated bishop to appear within one or two months at the most. Boniface VIII. in Sext. Lib. II. Tit. III. c. 2 says that contestation of suit is not to be delayed because a peremptory exception is propounded. Law's Forms 173. See above, note 76.

(129). Gregory IX. in Decret. Lib. I. Tit. VI. c. 54, § 3, and Lib. II. Tit. V. c. 1: Contestation of suit is not made by positions (or articles), and answers to them, but by a petition propounded in law, and a reply to it [before the judge].

(130). Law's Forms 173, 81.

(131). Innocent III. in Decret. Lib. II. Tit. VI. c. 1 and 5: The same to the Bishop of Durham, *Ibid.* Tit. XX. c. 34 and c. 41. Law's Forms 173 says that the practice, nevertheless, is to administer the oath to witnesses in court by anticipation.

as yet the suit has no existence (132); neither can there be any judicial sentence in the cause, but only an extra-judicial ruling on the controversy. Contestation of suit is therefore defined to be the fundamental act and basis (*principium formale*) of all judicial discussion. Accordingly it has no place (1) in summary or extra-judicial causes, (2) in executive and other causes introduced without a libel, (3) in criminal causes where the facts are notorious, and (4) generally in all causes in which a judge is authorised to proceed of mere office without judicial forms (133); nor (5) in appeals, because the original contestation applies to these. In certain causes, nevertheless, such as a proceeding for heresy, contumacy in not appearing when cited is deemed equivalent to contestation of suit (134), and in summary and executive causes the act which ordinarily follows contestation is held to set up the instance of the cause (135).

25. The principal effects which follow upon contestation of suit are the following: (1) With it the judicial suit commences, and the instance begins to run. (2) It breaks a prescription, or from it a prescription may be set up (136). (3) It excludes dilatory exceptions, except in the three cases already named (137). (4) It perpetuates the decision of a judge-delegate up to the final decision of the suit (138). (5) The proctors of both parties are now masters of the suit (*domini litis*).

26. Contestation of suit is followed by the oath against vexatious litigation, called the *oath of calumny* (139). In this

(132). Innocent III. *Ibid.* Lib. I. Tit. XXXVIII. c. 4; Gregory IX. *Ibid.* Lib. II. Tit. V. c. 1. Law's Forms 172: Contestation of suit is defined to be the *principium formale*, the fundamental judicial act whereby the judge begins to take cognisance of the cause.

(133). See *Canonical Procedure*, § 8.

(134). Lynd. 302.

(135). Ayliffe 151.

(136). Devoti Lib. III. Tit. VII. § 4.

(137). See § 15 and note 126.

(138). Lucius III. to Archbishop of Canterbury in Decret. Lib. I. Tit. XXIX. c. 19.

(139). Devoti Inst. Lib. III. Tit. VII. § 1. Const. 24 Otho, A.D. 1237:

oath the party swears that he believes his cause to be just and good, that he will neither knowingly deny the truth nor use false evidence, and that he will not vexatiously cause delays nor attempt to succeed by bribery. This oath, which was customary among the Romans, was at first administered only to laymen, but afterwards to clergy also, including public bodies and bishops (140). By the rule of the thirteenth century it could be required from both plaintiff and defendant (141), in causes criminal as well as civil (142), on appeal as well as in the first instance (143); but by the custom of this country laymen can only be called upon to take it in matrimonial and testamentary causes (144) In cases in which it is allowed, a plaintiff refusing to take it is cast in his suit, and a defendant refusing it is treated as one who has confessed the injustice of his defence (145). Formerly it could be taken by a proctor on behalf of his principal, but this practice is at least discountenanced here (146). A special form of it, called the oath of malice,

"We ordain that the oath of calumny, in all ecclesiastical causes whatsoever, and of speaking the truth in spiritual causes [*i.e.*, the oath *ex officio*], be for the future taken in the kingdom of England." The oath may be administered before contestation of suit whenever a dilatory exception is propounded. Sext. Lib. II. Tit. IV. c. 1; Ayliffe 138. See *Canonical Procedure*, note 37.

(140). Lucius III. to the Bishop of Ely and the Archdeacon of Norwich in Decret. Lib. II. Tit. VII. c. 5, authorises clergy to take the oath of calumny, and Gregory IX. *Ibid.* c. 7 authorises bishops.

(141). Lucius III. to the Bishop of Ely and Archdeacon of Norwich in Decret. Lib. II. Tit. VII. c. 5.

(142). Honorius II. in Decret. Lib. II. Tit. VII. c. 2 states that it was not the Roman custom to administer it in causes concerning churches, tithes, and spiritual causes; but Boniface VIII. in Sext. Lib. II. Tit. IV. c. 1 ordered it to be taken in these. Ayliffe 139; Lynd. 111.

(143). Sext. Decret. Lib. II. Tit. IV. c. 2.

(144). The act 2 Hen. IV. c. 15, which at one time allowed it, was repealed by 1 Eliz. c. 1. Ayliffe 138; Law's Forms 281.

(145). Gregory IX. in Decret. Lib. II. Tit. VII. c. 7; Athon. 60; Law's Forms 256, 283.

(146). This is sanctioned by Eugenius III. in Decret. Lib. II. Tit. VII. c. 3 and 4, also Sext. Lib. II. Tit. IV. c. 3, but forbidden in this country by Can. 132 of 1603.

may be administered by the judge to either of the parties as often as he sees fit (147).

27. Before the question of proof is gone into an important part of every suit is the so-called personal decree (148). By this decree, which is issued by the judge at the plaintiff's instance, the defendant is required to make answer upon oath to certain positions extracted from the libel and propounded to him in judgment, called interrogatories (149). In all civil causes interrogatories may be administered to the defendant, and personal answers may be required from him, except when they suggest matter which might incriminate him (150). In criminal causes personal answers may not be required from the defendant (151) when the judge's office is promoted at the instance of a voluntary promoter; but when the judge proceeds of mere office, or, in other words extra-judicially, the so-called *ex officio* oath compelling him to answer to the criminal charge could formerly be administered to him in synod or audience. This has now been made illegal in this country by secular legislation (152); but if he

(147). Law's Forms 257, 281, 284.

(148). Law's Forms 183.

(149). Gregory IX. quoted note 129; Boniface VIII. in Decret. Lib. II. Tit. IX. c. 2; Ayliffe 65; Eccles. Courts Commission, 1883, Hist. App. I. 182.

(150). Law's Forms 189 says not in cases of defamation, correction, and perjury. Boniface in Decret. Lib. II. Tit. X. c. 2 requires public bodies to make answer to interrogatories through their syndic.

(151). Ayliffe 65, 397; Law's Forms 177 and 190: In criminal charges the party is not bound to answer on his oath; but the position is admissible as far as regards the proof. Sir John Nicoll's decree in the case of *Schultz* v. *Hodgson*, Addam's Reports I. 113, has confirmed this practice, and it is now fully understood that in criminal charges the defendant cannot be required to return any personal answer on oath. But see note 151.

(152). Const. 25 Otho, A.D. 1237, introduced the oath of truth or oath *ex officio*, as well as the oath of *calumny*, into this country. The act 25 Hen. VIII. c. 14, since repealed, recited that it standeth not with the right order of justice or equity that any person should be convicted or put to the loss of his life, good name, or goods, unless it were by due accusation and witnesses, or by presentment, verdict, confession, or process of outlawry. 13 Car. II. c. 12, sec. 4, forbids the oath *ex officio*. Stephen's Eccl. Stat. 149; Ecclesiastical Courts Commission, 1883, Hist. App. I. 182, II. 207, 239; Law's Forms 189. See *Canonical Procedure*, notes 141 and 149.

tendered himself as a witness in a judicial proceeding it was usual to examine him as to the existence of fame or scandal respecting the matter charged (153).

28. If the plaintiff's case is established by the defendant's admissions, he may proceed to the conclusion and to sentence without proof by witnesses; or if any portion only is established he may produce witnesses in confirmation of the remaining articles only (154). It is for the judge to determine the proper order of the investigation (155). In doing so he has to consider three things: (1) the nature of the defendant's exceptions, (2) the existence or absence of a counter-claim, and (3) the style or custom of the court (156). It must, however, be remembered that by recent secular legislation in this country three different styles are in use in ecclesiastical courts, according to the nature of the cause, viz. (1) the old canonical mode of procedure, which is still followed in faculty cases; (2) the mode of procedure introduced by the Church Discipline Acts of 1841 and 1892, for the public discipline of clergy; and (3) the mode of procedure prescribed by the Public Worship Act, 1874, for restraining deviations from the forms sanctioned by the Act of Uniformity. The two last are statutory modes of procedure, differing in many respects from that prescribed by the Canon Law.

29. The term exception is applied to any allegation in the nature of a defence which delays or defeats the plaintiff's intention in judgment (157). The general effect of alleging an

(153). Ecclesiastical Courts Commission Report, 1883, p. 4, states that the effect of 17 and 18 Vict. c. 47 is to render the parties to an ecclesiastical cause, including the defendant in a criminal suit, competent and compellable witnesses. See also Hist. App. I. 191. Paschal II. quoted note 201, declared him a competent witness.

(154). Law's Forms 183.

(155). Ordo cognitionum in Decret. Lib. II. Tit. X.; Devoti. Lib. III. Tit. XI.

(156). Ayliffe [193].

(157). Concil. Lugdun. A.D. 1245, in Sext. Lib. II. Tit. III. c. 1, calls a peremptory exception a defence. Boniface VIII. *Ibid.* c. 2 states that it does not effect a contestation of suit. Devoti Lib. III. Tit. X. c. 1.

exception is to introduce a new question, and to change the position of the parties until it is disposed of by casting the burden of proof upon its propounder (158). The plaintiff may meet this by himself excepting to the defendant's exception, whereby the burden of proof is thrown back upon him (159). This is termed a replication or reply, and other exceptions for and against may follow in like manner (160). An exception is called (1) criminal when it alleges a crime which would disqualify the adverse party from appearing in judgment, or (2) civil when it alleges some ground or reason which strikes at the root of a cause. One who alleges crime by way of exception is allowed two advantages, because he is acting in self-defence: (1) He is not required to subscribe to the law of retribution before proceeding to proof. (2) He is not liable to an action for defamation if he proves his exception (161), nor by the custom of France if he fails in proving it (162),

30. Exceptions are usually divided into (1) dilatory and (2) peremptory. Any defence which delays the plaintiff's intention in judgment but does not perempt it by going to the root of the matter, is termed a dilatory exception (163). One which defeats and perempts the suit itself is called a peremptory (164) or incident (165) exception. Dilatory exceptions have place when a cause is first introduced before contestation of suit (166), and if

(158). Ayliffe 251 ; Devoti Lib. III. Tit. x. § 11.

(159). Innocent III. to Archdeacon of Richmond in Decret. Lib. II. Tit. XXV. c. 2.

(160). They are termed duplications, triplications, quadruplications, or rejoinders, surrejoinders, and rebutters. Ayliffe 251 ; Devoti, § 12.

(161). Ayliffe 254.

(162). *Ibid.* Craisson, § 5873 ; Law's Forms 177. See *Canonical Procedure*, note 76.

(163). See § 15.

(164). Innocent III. in Decret. Lib. II. Tit. XX. c. 29, says that a witness called to prove a dilatory exception cannot be examined respecting the principal matter, but a witness called to prove a peremptory exception can. Concil. Lugdun. A.D. 1245, in Sext. Lib. II. Tit. III. c. 1.

(165). Ayliffe 253 : Every peremptory exception is styled an incidental exception, quasi incidens seu perimens ipsum negotium principale.

(166). Ayliffe 252. See § 15 and note 87.

not then made are ordinarily taken to be waived. Peremptory exceptions may be propounded at any time, but, to be decisive of the suit, they cannot be propounded until by contestation the cause has become a suit. Some peremptory exceptions are called *merely peremptory,* because they dispose of the suit but do not destroy its instance, such as prescription or fraud, and these may be propounded at any time before sentence, but not afterwards (167). Others are called exceptions conclusive of a suit (*litis finitae*) (168), because they destroy the instance, such as that the matter has been already judicially settled (*res judicata*), or that it has been settled by a composition out of court. These may be alleged at any time, even after sentence in bar of execution (169).

31. The various incidental questions which are thus raised by way of exception may be grouped in three classes, having regard to their bearing on the main issue, viz. (1) those called *prejudicial* (170), (2) those called *preparatory,* and (3) those called *collateral* (171). A prejudicial question is one which carries with it the decision of the main issue. Thus a decision that there never has been a valid marriage is a prejudicial decision which disposes of a suit for the restitution of conjugal rights (172). A preparatory question is one without the decision of which the main question cannot be decided, but which does not in itself

(167). Ayliffe 252, 255 ; Devoti, § 4.

(168). Innocent III. A.D. 1198, to the Archbishops of Armagh and Cashel, in Decret. Lib. II. Tit. XIV. c. 7. Gregory IX. *Ibid.* Tit. XXV. c. 13 calls them res judicatae. Devoti Lib. III. Tit. X. § 2 calls them peremptoriae litis finitae. Ayliffe 253. Boniface VIII. in Sext. Lib. II. Tit. XII. c. 2 directs secular judges to receive a plea of *res judicata* from spiritual judges, and *vice versâ.*

(169). Ayliffe 252.

(170). Boniface VIII. in Sext. Lib. II. Tit. XV. c. 12 : Although no appeal was made from an interlocutory ruling prejudicial to the principal matter, yet if a definitive sentence is [successfully] appealed against, the grievance inflicted by the interlocutory ruling may be lawfully set right by the judge of appeal.

(171). Devoti Lib. III. Tit. XI. § 1.

(172). Clemens III. in Decret. Lib. II. Tit. X. c. 1 ; Honorius III. A.D. 1224, *Ibid.* c. 3.

settle the main question. Thus, if a bishop is called to account for the acts of his official which are said to be illegal, and denies that he is responsible for them, a decision that he is responsible does not dispose of the main issue unless the official's acts are shown to be illegal. A collateral question is one the decision of which does not affect the main issue.

32. The order in which exceptions are admitted to proof depends on their nature. Those involving prejudicial questions should be first taken, because they dispose of the whole cause (173); next those involving preparatory questions, and lastly those involving collateral questions. When several exceptions of equal relevance are propounded, those which raise criminal suggestions should have precedence of those raising civil suggestions (174). An exception of wrongful dispossession takes precedence of all others, because no one who has been wrongfully dispossessed can be required to answer to the party who has dispossessed him (175). The judge determines the order, and assigns to each party a time within which his proofs are to be made. This is called the term probatory (176), and is the most important term in the suit.

(173). Clemens III. *Ibid.* c. 1 : When by the proof of the exception the principal question is disposed of, the exception itself ought first to be inquired into.

(174). Devoti, § 5.

(175). Pseudo-Isidor. ap. Gratian Caus. III. Qu. 1. c. 1, 2, 3, and Qu. II. c. 2 ; Caus. v. Qu. II. c. 4 ; Innocent III. A.D. 1204, in Decret. Lib. II. Tit. X. c. 2 ; Gregory IX. *Ibid.* c. 4. Spoliation presupposes (1) possession, (2) dispossession (*dejectio*). Alexander III. in Decret. Lib. I. Tit. XXIX. c. 10, and Lib. II. Tit. XIII. c. 17 ; Innocent III. to the Bishops of Rochester and London, *Ibid.* Tit. XXVIII. c. 51. Alexander III. to Bishop of Worcester, *Ibid.* Lib. II. Tit. XIII. c. 2, states that a resignation of a benefice is void if the resigner has been previously dispossessed. The same to the Bishop of Exeter, *Ibid.* c. 6, says that a charge of crime cannot be allowed as a defence to a petition for restitution to a benefice. The same to the Archbishop of Canterbury, *Ibid.* c. 7, directs a clerk to be first restored, and then the criminal charge against him to be ventilated.

(176). Pelagius I. ap. Gratian Caus. III. Qu. IX. c. 20 directs a judge to assign a competent term for law and truth. Ecclesiastical Courts Commission, 1883, Hist. App. I. 197. The introduction of *viva voce* evidence

PROOF.

33. It is the business of the plaintiff or accuser to prove his libel, of the defendant or accused to prove his exceptions, and for each one to do so within the term assigned him (177). Unless the defendant's exception peremptes the whole libel, each one must further prove his several allegations, or they cannot be received in judgment. If the defendant fails to prove his exception, the plaintiff is not thereby relieved from proving his libel; but if the plaintiff or accuser fails to prove his libel, the defendant is under no obligation to prove a negative (178), except in some few cases in which the presumption of law is against him (179).

34. Proof is defined to be the establishment by evidence or demonstration of a doubtful or disputed matter in judgment, in order to enable a judge to determine a controversy pending between two parties (180). It includes (1) producing proper and trustworthy evidence, (2) meeting or rebutting all exceptions taken to the evidence, and (3) the publication of sufficient evidence before the judge. By the last-named act it becomes

before the judge in court by 14 and 15 Vict. c. 99, has practically abolished the term probatory.

(177). Ayliffe 151 : If no sentence is pronounced in a civil cause within three years, or in a criminal cause within two years, the instance is said to be perempted. *Id.* 154 says by English usage there is no certain time. Law's Forms 202, 214.

(178). Gregory ap. Gratian Caus. VI. Qu. V. c. 1, quoted in *Canonical Procedure*, note 47, and Caus. II. Qu. V. c. 11. Innocent III. in Decret. Lib. II. Tit. XII. c. 3 : If the plaintiff proves nothing, the defendant wins, although he does nothing. Ayliffe 444 ; Honorius III. in Decret. Lib. II. Tit. XIX. c. 12. Lord Selborne in *Leonard* v. *Ellis*, 26 Ch. D. 204 : No one is bound to prove a negative.

(179). Boniface VIII. in Sext. Lib. II. Tit. V. c. 2, says that the presumption of law is against a man who claims tithes in another's parish, and Concil. Lugdun. A.D. 1274, *Ibid.* Tit. IX. c. 1. See *Canonical Procedure*, note 147.

(180). Isidor. in Decret. Lib. V. Tit. XL. c. 10 ; Devoti Inst. Lib. III. Tit. IX. § 1 ; Ayliffe 442, 275 ; Law's Forms 200.

judicial proof. Judicial proof is nevertheless of two degrees, viz. (1) full and complete, and (2) half or incomplete (181).

35. Full proof is made (1) by evidence of the fact, or (2) by the confession of the opposite party, or (3) by the deposition of two or more credible witnesses touching the same matter, or as it is said by the living voice (*viva voce*), or (4) by a public instrument (182) called the dead voice (*mortua voce*) (183). Its effect is threefold: (1) it determines the sentence; (2) it prevents the plaintiff being required to prove his intention by an oath, which if tendered to him he is justified in refusing (184); (3) in a criminal cause the oath of purgation can no longer be tendered to the accused, because purgation is allowed only to those suspected, not to those convicted. In all criminal causes full proof is imperative (185).

36. The deposition of a single witness, or of several doubtful witnesses, or a private writing, or in some cases a strong presumption or common fame, constitutes half proof. In civil causes half proof may sometimes suffice, as when private accounts are allowed to prove a debt (186), or common fame is allowed to prove parish boundaries (187). In other cases half proof may be converted into full proof by means of an oath, called the necessary oath or oath suppletory (188), and in criminal causes it may be rebutted by the defendant's oath of purgation (189). In all

(181). Ayliffe 444; Devoti, § 3.

(182). Innocent III. in Decret. Lib. II. Tit. XIII. c. 15.

(183). Law's Forms 264.

(184). Alexander III. in Decret. Lib. II. Tit. XIX. c. 2.

(185). Gratian Caus. II. Qu. VIII. c. 2: In crimes the evidence ought to be clearer than noon-day. Concil. Brac. II. A.D. 572, *Ibid.* Caus. II. Qu. IV. c. 1. Alexander III. in Decret. Lib. II. Tit. XX. c. 10: The testimony of one is not sufficient to condemn any one. Innocent III. *Ibid.* c. 23, 28: The same to the Bishop of Exeter. *Ibid.* Lib. III. Tit. II. c. 8: Fame is not sufficient evidence in a criminal case. Lynd. 296, 304; Ayliffe 448; Stephens' Eccl. Stat. 557.

(186). Law's Forms 201. See *Canonical Procedure*, note 40.

(187). Honorius III. in Decret. Lib. II. Tit. XIX. c. 13; Ayliffe 275, 277.

(188). Alexander III. in Decret. Lib. II. Tit. XIX. c. 2; Devoti Lib. III. Tit. IX. § 25; Law's Forms 284.

(189). Alexander III. in Decret. Lib. V. Tit. I. c. 10, directs it to be taken

criminal causes, when the matter is left doubtful by the evidence, the rule of charity requires the best construction to be put on the appearances (190), and the oath of purgation to be administered to the defendant, unless there is a strong presumption against him (191).

37. Evidence of a fact is such evidence as is either (1) notorious or most evident (192), (2) manifest or more evident, or simply (3) clear (*liquida*) (193). Notorious evidence is that which is known to all men, as that St. Paul's Church stands in London (194), or which can be proved to the judge by ocular demonstration (195), as that a person alleged to be dead is alive and present in court. Manifest evidence is that which has been openly done, and can be proved by any number of witnesses, although it is not known to all men, as when a criminal has been caught in the act of committing a crime (196).

in a case of alleged simony. Innocent III. *Ibid.* Tit. IX. c. 5 directs it to be administered to a presbyter charged with apostasy. *Id. Ibid.* Tit XII. c. 14 prescribes it in a case of alleged homicide. *Id.* to Bishop of Exeter, *Ibid.* Lib. III. Tit. II. c. 8, in a case of alleged concubinage. Clement III. *Ibid.* Lib. II. Tit. XVIII. c. 1, in a case of alleged abetting of murder. Other cases, *Ibid.* Lib. V. Tit. II. c. 2, and Tit. I. c. 19. See *Canonical Procedure*, note 151 : Administering the oath of purgation properly belongs to the judge's noble or extra-judicial office.

(190). Baeda in Decret. Lib. V. Tit. XLI. c. 2 : Those things as to which it is doubtful with what intent they are done should have the best explanation put upon them. Lucius III. *Ibid.* Lib. II. Tit. XIX. c. 3 : If the witnesses of both parties are equally worthy of credit (idonei), let the witnesses of him who is in possession be preferred, because principles of right (jura) are more ready to absolve than to condemn. Innocent III. *Ibid.* c. 9.

(191). Law's Forms 284. See the *Conclusion of a Cause*, § 4.

(192). *Ibid.* 201.

(193). Ayliffe, 443, 447.

(194). Innocent III. to Bishop of Exeter in Decret. Lib. III. Tit. II. c. 8. In a case of notoriety neither witness nor accuser is necessary, evidently referring to Eugenius III., *Ibid.* Lib. V. Tit. I. c. 9. Innocent III. *Ibid.* c. 7, says that notoriety which cannot be refuted constitutes proof. Lynd. 323, defines notoriety as proof beyond dispute wanting no further discussion. Ayliffe 448.

(195). Gregory IX. in Decret. Lib. II. Tit. XIX. c. 4.

(196). Ayliffe 443.

Clear evidence is that which is neither notorious nor manifest as regards the public at large, but yet to the judge is equally clear, such as an act of court (197).

38. The best kind and the queen of proofs is held to be the confession of the adverse party (198). A confession may, however, be made: (1) either discreetly (199), as when it refers to the pending controversy, or indiscreetly, when it is made in connection with some other matter; (2) simply or qualifiedly, as when the fact is admitted, but a different version is given of the attendant circumstances; (3) judicially, when made before a judge, or extra-judicially, when made elsewhere; (4) explicitly, when made in express words, or tacitly, as when it may be inferred from flight or contumacy, or from refusing to answer interrogatories (200).

39. To constitute proof, a confession must be made (1) judicially, *i.e.*, before the proper judge (201), (2) freely and without constraint (202), and (3) in the adversary's presence (203). If not made spontaneously, it may be withdrawn (204). A tacit confession only amounts to half proof, unless it be a refusal to answer interrogatories (205); but no value attaches in a criminal

(197). *Liquido constat*, by Innocent III. in Decret. Lib. II. Tit. XII. c. 3.

(198). Lucius III. in Decret. Lib. III. Tit. II. c. 7: When he does not deny a notorious crime, or when he has been publicly condemned for it.

(199). Craisson, § 5708; Law's Forms, p. 174.

(200). Boniface, A.D. 419, ap. Gratian Caus. III. Qu. IX. c. 10; Boniface VIII. in Sext. Lib. II. Tit. IX. c. 2.

(201). Alexander III. in Decret. Lib. II. Tit. I. c. 4; quoted *Spiritual Courts*, note 178.

(202). Pascal II. in Decret. Lib. II. Tit. XX. c. 4: In every matter the principal person may be admitted as a witness.

(203). Gregory in Decret. Lib. II. Tit. XX. c. 2: Evidence not taken in the other party's presence is not available. Pseudo-Isidor. ap. Gratian Caus. III. Qu. XI. c. 3; Nicolaus, A.D. 864, *Ibid.* Caus. XV. Qu. VI. c. 1; Devoti Lib. III. Tit. IX. § 4 and 18; Ayliffe 545.

(204). Gregory IX. in Decret. Lib. II. Tit. XVIII. c. 3; Law's Forms 190, 194.

(205). Boniface VIII. in Sext. Lib. II. Tit. IX. c. 2: If the defendant or his proctor, after taking the oath of truth or calumny, without reasonable cause refuses to answer to the interrogatory positions propounded by his

cause to an extorted confession (206), to the confession of an accomplice, unless it discloses the crime of treason (207) or simony (208); nor is any confession evidence against third parties (209).

40. To make proof by witnesses, (1) fit and proper persons must be produced, (2) in sufficient number to comply with the canon, and (3) they must give unequivocal evidence upon oath, in presence of the opposite party (210). An exception may be taken to the evidence of any witness who fails to fulfil these conditions, and, if sustained, the evidence cannot be admitted (211). Such exception may be either (1) general or (2) specific (212). An exception is said to be general when it is made by word of mouth, and neither specifies time, place, nor mode of proceeding; special when it is made in writing, and specifically states the cause why such and such a person's evidence ought not to be received (213). Sometimes exception is made against the persons of the witnesses, as that they are evil reported of, criminal, or worthless; at other times against their depositions, as that they are ambiguous, contradictory, or irrelevant (214), and such exceptions may be advanced both before and after the publication of the depositions (215). A general exception may be met by

adversary, or contumaciously fails to do so, he shall be deemed to have confessed to the contents of the interrogatories.

(206). Nicolaus ap. Gratian Caus. xv. Qu. v. c. 2.

(207). Cod. Theodos. *Ibid.* Caus. xv. Qu. iii. c. 5; Clemens iii. in Decret. Lib. ii. Tit. xviii. c. 1.

(208). Innocent iii. *Ibid.* c. 2.

(209). Pseudo-Isidor. ap. Gratian Caus. iii. Qu. xi. c. 3. Alexander iii. in Decret. Lib. ii. Tit. xx. c. 10. : No one who testifies against himself can be trusted testifying against another in the same matter. Clemens iii. *Ibid.* Lib. ii. Tit. xviii. c. 1.

(210). Gregory, a.d. 594, in Decret. Lib. ii. Tit. xx. c. 2; Pseudo-Isidor. ap. Gratian Caus. iii. Qu. x. c. 15.

(211). Alexander iii. to Archbishop of Canterbury in Decret. Lib. ii. Tit. xx. c. 13.

(212). Law's Forms 256.

(213). *Ibid.* 255, 258.

(214). *Ibid.*

(215). *Ibid.*

tendering the oath of calumny to the objector, or an oath of malice in substitution for it (216). A specific exception must be proved within an assigned term, or it cannot be allowed. The refusal to admit an exception is a good ground of appeal (217).

41. Fit and proper witnesses are upright and honest men, who depose to what is matter of their own knowledge and belief (218), preference being given to those who are themselves Christians (219). Unfit persons are (1) slaves and dependents, clothed and paid by the party producing them (220), except in causes of adultery, non-payment of rent, or treason (221); (2) children under fourteen years of age (222); (3) persons of ill-repute, perjured (223), and criminous persons (224); (4) those who have an interest in the cause (225), or who may be suspected of having an interest, such as paupers (226); and (5) all who are excommunicate (227). If they are denounced persons, they

(216). Law's Forms 257, 281.

(217). Alexander III. to Bishop of Hereford in Decret. Lib. II. Tit. XX. c. 7; *Id. Ibid.* Tit. XXVII. c. 22.

(218). Pseudo-Isidor. ap. Gratian Caus. III. Qu. IX. c. 15, 16; Caus. IV. Qu. II. c. 3; Ayliffe 65, 446. Law's Forms 187: On those points which relate to actions done by yourself, you shall answer according to your knowledge, and, with relation to the actions of others, according to your belief.

(219). Concil. Lat. III. A.D. 1179, in Decret. Lib. II. Tit. XX. c. 21.

(220). Pseudo-Isidor. ap. Gratian Caus. III. Qu. V. c. 8. Alexander III. in Decret. Lib. II. Tit. XX. c. 24: Those are not fit witnesses whom the plaintiff produces from among his dependents (de familia sua). Ayliffe 536.

(221). Cod. Lib. IX. Tit. de Quaest. ap. Gratian Caus. XII. Qu. II. c. 59.

(222). Concil. Carthag. VII. A.D. 419, ap. Gratian Caus. IV. Qu. II. c. 1: Let not those be admitted to give testimony who are under fourteen. Cap. Franc. *Ibid.* Caus. XXII. Qu. V. c. 14.

(223). Halitgar ap. Gratian Caus. VI. Qu. I. c. 18; Concil. Matiscon. I. Can. 17, A.D. 581, *Ibid.* Caus. XXII. Qu. V. c. 7; Cap. Franc. *Ibid.* c. 14.

(224). Pseudo-Isidor. *Ibid.* Caus. II. Qu. VII. c. 39. Alexander III. to Archbishop of Canterbury in Decret. Lib. II. Tit. XX. c. 13, says that if they have not been previously convicted of crime: but the exception is now sustained, they ought not to be admitted as witnesses.

(225). Alexander III. in Decret. Lib. II. Tit. XX. c. 9.

(226). Law's Forms 255.

(227). Concil. Carthag. VII. A.D. 419, Can. 1 in Codex Eccles. Afric. 128; Pseudo-Isidor. ap. Gratian Caus. III. Qu. IV. c. 6.

should be repelled by the judge, otherwise it is for the adverse party to take exception to them (228). In causes concerning their Churches, nevertheless, clergy are not disqualified from being witnesses simply on the ground that they are interested (229)

42. In criminal causes, avowed enemies (230), those who are guilty of the same offence (231), unless they have purged their crime (232), accomplices (233), children under twenty years of age (234), renegade Jews (235), and women, unless in matters concerning themselves (236), are also excluded. In the three excepted crimes of treason, heresy, and simony, all persons may be admitted as witnesses, except accomplices and avowed enemies (237). Laymen cannot be witnesses against clergy in

(228). Gregory IX. in Decret. Lib. II. Tit. XXV. c. 12; Alexander IV. in Sext. Lib. V. Tit. XI. c. 8.

(229). Alexander III. to Archbishop of Canterbury in Decret. Lib. II. Tit. XX. c. 12 and 6.

(230). Socrates VI. 17 relates that Chrysostom took exception to his accusers on the ground that they were avowed enemies. I. 31 says that Athanasius did the same. See *Spiritual Courts*, note 148. Pseudo-Isidor. ap. Gratian Caus. III. Qu. V. c. 2, 4, 10, 11, 13; Nicolaus I. A.D. 864, *Ibid.* c. 15; Pseudo-Stephen in Decret. Lib. V. Tit. I. c. 7 also excludes those living under the same roof as enemies. Innocent III. *Ibid.* c. 19; Sext. Lib. V. Tit. II. c. 5; Lynd. 304.

(231). Alexander III. to Bishop of Norwich in Decret. Lib. II. Tit. XX. c. 20.

(232). Cod. Val. ap. Gratian Caus. III. Qu. XI. c. 2 and 3; Coelestin III. in Decret. Lib. II. Tit. XXV. c. 1, and Innocent III. Tit. XX. c. 54; Lib. V. Tit. III. c. 32.

(233). Pseudo-Isidor. ap. Gratian Caus. III. Qu. IV. c. 5; Caus. XV. Qu. III. c. 5; Caus. III. Qu. XI. c. 3; Clemens III. in Decret. Lib. II. Tit. XVIII. c. 1; Alexander III. *Ibid.* Tit. XX. c. 10; Ayliffe 536.

(234). Ayliffe 536.

(235). Concil. Carthag. VII. A.D. 419, ap. Gratian Caus. IV. Qu. I. c. 1; Concil. Tolet. IV. A.D. 633, says renegade Jews. *Ibid.* Caus. II. Qu. VII. c. 24.

(236). Gregory in Decret. Lib. II. Tit. XX. c. 3, A.D. 593, directs that the evidence of women, with whom he is said to have been too familiar, should be received against a presbyter. Alexander III. *Ibid.* c. 22 says that a mother's evidence is suspect when she would wed her daughter to a man much older than herself. Devoti Inst. Lib. III. Tit. IX. § 14.

(237). Concil. Tolet. VI. A.D. 639, ap. Gratian Caus. III. Qu. IX. c. 9;

criminal causes unless they have an interest in them (238), nor proctors nor advocates in causes which they are defending (239), nor a judge in a cause which he has to decide, without previously delegating it to another (240); but both laymen and women are competent to prove the disqualification of one elected for promotion (241).

43. In criminal causes requiring full proof, two witnesses at the least are necessary (242), and in some cases more (243); but more than forty may not be produced in any case (244). A witness

Deusdedit in Decret. Lib. v. Tit. III. c. 7; Innocent. III. A.D. 1199, *Ibid.* c. 31. Alexander III. *Ibid.* Lib. II. Tit. XX. c. 10 forbids accomplices to be received as witnesses in cases of simony. Gregory IX. *Ibid.* c. 56 forbids an accused person to be a witness, except in the excepted crimes. Innocent III. *Ibid.* Lib. v. Tit. III. c. 31 excludes enemies and accomplices in a case of simony. Concil. Lugdun. I. A.D. 1245, in Sext. Lib. II. Tit. X. c. 1, allows an accomplice to give evidence in a case of simony if the proceedings are in civil form. Alexander IV. *Ibid.* Lib. v. Tit. II. c. 5, allows accomplices to give evidence against heretics.

(238). Alexander III. *Ibid.* Lib. v. Tit. I. c. 10, and Innocent III. *Ibid.* Lib. II. Tit. XX. c. 14.

(239). Eugenius. III. *Ibid.* Lib. II. Tit. XX. c. 6; Concil. Lugdun. II. A.D. 1274, in Sext. Lib. II. Tit. X. c. 3.

(240). Concil. Carthag. v. A.D. 401, Can. 1 ap. Gratian Caus. II. Qu. VI. c. 38; Innocent III. in Decret. Lib. II. Tit. XX. c. 40.

(241). Innocent III. *Ibid.* c. 33.

(242). Hist. Susannah v. 48; Deut. XIX. 15; John VIII. 7. Apost. Const. II. 21: Do not admit less evidence to convict any one than that of three witnesses, and those of known reputation. II. 37, 49; Apost. Can. 75: Do not receive an heretic in a testimony against a bishop, nor a Christian if he be a solitary witness, for the law saith, In the mouth of two or three witnesses every word shall be established. Concil. Ilerd. A.D. 546, ap. Gratian Caus. XXXV. Qu. VI. c. 11; Egbert's Dial. 4, A.D. 734; Concil. Brac. II. Can. 8, A.D. 572, ap. Gratian Caus. II. Qu. IV. c. 1; Paschal II. in Decret. Lib. II. Tit. XX. c. 4; Innocent III. *Ibid.* c. 23.

(243). Pseudo-Silvester ap. Gratian Caus. II. Qu. IV. c. 2, prescribes seventy-two for a bishop, forty-four for a cardinal, twenty-seven for a cardinal-deacon, seven for a subdeacon, collet, &c. Leo IV. A.D. 850, *Ibid.* c. 3, says that a bishop can only be condemned by twelve bishops upon the evidence of seventy-two witnesses. Devoti Inst. Lib. III. Tit. IX. § 9.

(244). Innocent III. A.D. 1206, in Decret. Lib. II. Tit. XX. c. 37.

may be compelled (245), by a compulsory decree (246) and ecclesiastical censures (247), even though residing out of the jurisdiction (248), to give evidence, and to give it upon oath (249). The oath usually administered is to the effect that, setting aside favour and affection, malice and prejudice against either of the litigants, he will testify the truth, and the whole truth, so far as his knowledge extends (250), and beyond that his belief; and that he has not been bribed, nor has any pecuniary interest in the cause. A witness is also enjoined to give his testimony fasting (251), and to give it simply and unequivocally (252). Monks and religious persons are not exempt from taking the oath before giving evidence, except by consent of the parties (253). The oath must be administered to the witness in court in presence of the adverse party, but the depositions are usually taken either before the judge or before a commissioner deputed to act for him, called an examiner (254), and, when

(245). Alexander III. in Decret. Lib. II. Tit. XXI. c. 1 and 2; Innocent III. *Ibid.* c. 8, 9. Honorius III. *Ibid.* c. 11 says that accomplices can be compelled. Const. 17 Boniface, A.D. 1261; Lynd. 109.

(246). Alexander III. to Bishop of Exeter in Decret. Lib. II. Tit. XX. c. 18. Law's Forms 210, 240.

(247). Alexander III. in Decret. Lib. II. Tit. XXI. c. 2 says that if the evidence is necessary, a clergyman may be suspended, and a layman excommunicated, to make him give evidence. Innocent III. A.D. 1213, *Ibid.* Tit. XX. c. 45.

(248). Laws Forms 209, 236, 248, says by the judges directing a requisition *sub mutuae vicissitudinis obtentu*, to the ordinary under whose jurisdiction they live, committing to him the examination, in order that when completed he may transmit the depositions.

(249). Honorius III. in Decret. Lib. II. Tit. XX. c. 51.

(250). Gratian Caus. III. Qu. IX. c. 20; Eugenius III. in Decret. Lib. II. Tit. XX. c. 5; Lynd. 254, 299; Law's Forms 215.

(251). Cap. Reg. Franc. ap. Gratian Caus. IV. Qu. II. c. 2, and Decret. Lib. II. Tit. XX. c. 1; Devoti Lib. III. Tit. IX. § 12.

(252). Ambros. ap. Gratian Caus. III. Qu. IX. c. 17, says, Pura et simplex testimonii series. Gregory IX. in Decret. Lib. II. Tit. XX. c. 53.

(253). Innocent III. A.D. 1208, *Ibid.* c. 39 and 51.

(254). Eugenius III. to Bishops of Exeter and Worcester, in Decret. Lib. II. Tit. XX. c. 8; Honorius III. *Ibid.* c. 52. The usual practice here was for the registrar to take the witness' depositions, which were read over

taken, are kept from the knowledge of both parties until published. By modern practice they are taken by word of mouth in court, as in a summary proceeding.

44. In all causes, civil as well as criminal, three productions of witnesses are allowed (255), but not more, except by special leave of the judge (256); viz. (1) by the plaintiff, to prove his libel, called probatory witnesses; (2) by the defendant, to make his exceptions as well against their depositions as against their persons, called reprobatory witnesses (257); and (3) by the plaintiff, to except against the depositions and the persons of the defendants' reprobatory witnesses, called reprobatory of the reprobatory witnesses. They may also be produced to corroborate the evidence already given in a matrimonial cause (258), or if the existence of additional necessary witnesses has subsequently come to the plaintiff's knowledge (259), or if the witnesses first produced have been confuted (260), or to prove new matter (261). The defendant may also administer interrogatories to the plaintiff's witnesses (262), without waiving his right to take exception to their fitness (263), provided he protests against their being received as witnesses at the time (264).

45. A public instrument, or document to constitute proof,

to him before the judge. Reading over before the judge was discontinued in the seventeenth century, except by request. Law's Forms 236.

(255). Alexander III. in Decret. Lib. II. Tit. XX. c. 15; Honorius III. *Ibid.* c. 29. The rule quoted in Law's Forms 255 is, In testem testes et in hos, sed non datur ultra.

(256). Alexander III. *Ibid.* c. 15; Innocent III. *Ibid.* c. 36 and 46; Gregory IX. *Ibid.* c. 55; Law's Forms 261.

(257). Clemens III. in Decret. Lib. II. Tit. XX. c. 26. Innocent III. *Ibid.* c. 35 allows this even after publication.

(258). Innocent III. A.D. 1212, in Decret. Lib. II. Tit. XX. c. 44.

(259). Law's Forms 218 calls it the production of witnesses after publication upon the first interrogatories; also 289.

(260). *Ibid.* 220.

(261). Alexander III. in Decret. Lib. II. Tit. XX. c. 19; Urban III. *Ibid.* c. 25; Innocent III. *Ibid.* c. 35 and 42.

(262). Boniface VIII. in Sext. Lib. II. Tit. X. c. 2; Law's Forms 216, 223.

(263). Law's Forms 216.

(264). Innocent III. in Decret. Lib. II. Tit. XX. c. 31; Law's Forms 224.

must be either (1) an instrument drawn by a public hand, such as a notary, and bearing his seal (265), or else (2) one executed by the party before witnesses, and countersealed upon his request (266) by a notary or other authentic person in his presence (267). The latter is usually called an authentic instrument. A copy of such an instrument is not evidence unless the same has been made by a public person (268); nor are instruments evidence which contradict one another (269), or have important erasures (270), or are illegible or unintelligible (271), or have been obtained by fraud (272); but the absence of a letter or two does not vitiate an instrument (273). In case of doubtful authenticity, the judge should consult his superior (274).

(265). Alexander III. in Decret. Lib. II. Tit. XXII. c. 2, refuses to allow a public instrument if the witnesses are dead, unless it was made by a public hand or bears an authentic seal. Innocent III. *Ibid.* c. 6.

(266). Const. 27 Otho, A.D. 1237: We hear letters are drawn and sealed in which it is stated that such a man made a contract who yet was not present nor anywhere to be found, nay, perhaps was then in another province or diocese. Now, since such writings do plainly imply forgery, we strictly forbid the drawing of them. Law's Forms 101: The official should specify that he has attached such seal at the special request of the mandatory, otherwise the certificate is of no avail.

(267). Const. 28 Otho, A.D. 1237: Because notaries public are not used in England, and therefore there is more frequent occasion for authentic seals, we ordain that not only archbishops and bishops but their officials, also abbots, priors, deans, archdeacons, and their officials, and deans rural, as also cathedral chapters and all colleges and convents, have a seal.

(268). Gregory, A.D. 593, in Decret. Lib. II. Tit. XXII. c. 1, and Gregorius IX. *Ibid.* c. 16.

(269). Gregory IX. in Decret. Lib. II. Tit. XXII. c. 13.

(270). Alexander III. *Ibid.* c. 3; Innocent III. A.D. 1199, *Ibid.* c. 6, and Lib. III. Tit. XXXVI. c. 7; *Ibid.* Lib. V. Tit. XXXIII. c. 14, and Tit. XX. c. 9.

(271). Innocent III. in Decret. Lib. II. Tit. XXII. c. 6.

(272). Innocent III. to Archbishop of Canterbury in Decret. Lib. II. Tit. XXII. c. 7.

(273). Honorius III. *Ibid.* c. 11, mentions *e* written in place of *eâ* (*h* for *her*).

(274). Innocent III. to Bishop of Ely, A.D. 1204, in Decret. Lib. II. Tit. XXII. c. 8: When a decretal is alleged, the authenticity of which the judge has doubts of, if it is in accordance with common law, let him not fear to base his decision upon it; . . . but if it is at variance with common law, let him base no decision upon it without consulting his superior.

46. An exception lies against a public instrument on the ground of forgery (275), and may be supported or rebutted by the inspection of the adverse party and experts (276), or by witnesses (277); but the party taking exception cannot claim to inspect other parts of the same instrument not pertinent to the matter in dispute (278). If upon request, inspection, or a copy of an instrument which is pertinent is refused by the judge, it is a good ground of appeal (279). Instruments may be put in evidence after the publication of witnesses, up to the very conclusion of a cause (280).

47. At any time after the expiration of the term probatory the judge, at the instance of either of the litigants, but not of a third party (281), may appoint a term for the publication of the depositions. By publication they become judicial evidence taken in the presence of the parties (282), and may now be used as subject-matter for argument on both sides (283). It is then ordinarily too late to take exception to a witness (284), or to re-examine him upon the matter on which he has already given

(275). Innocent III. in Decret. Lib. II. Tit. XXII. c. 10, says this may be proved by witnesses.

(276). Alexander III. to Archbishop of York, in a cause between the Archbishop of Canterbury and the Abbot of St. Augustine's, Canterbury, in Decret. Lib. II. Tit. XXII. c. 1; Law's Forms 270.

(277). Innocent III. in Decret. Lib. II. Tit. XXII. c. 10.

(278). Coelestin III. in Decret. Lib. II. Tit. XXII. c. 5.

(279). Gregory IX. *Ibid.* c. 12.

(280). Innocent III. *Ibid.* c. 9.

(281). Innocent III. to Bishop of Ely in Decret. Lib. II. Tit. XX. c. 30; Law's Forms 251.

(282). Gregory in Decret. Lib. II. Tit. XX. c. 2, requires the evidence to be taken in the presence of the adverse party. This requirement was ordinarily fulfilled by (1) administering the oath to the witness in his presence, and then (2) by publishing the evidence before him. *Ibid.* c. 41; Law's Forms 280.

(283). Alexander III. *Ibid.* c. 15.

(284). Innocent III. in Decret. Lib. II. Tit. XX. c. 31, allows exception to be taken to the witnesses after publication in three cases: (1) if he make oath that he is not doing it vexatiously; or (2) if he protested before; or (3) if the objections have only come to his knowledge since publication.

evidence (285); but his evidence may be taken on other articles to which his previous depositions did not apply (286). Evidence allowed in proof before one judge is evidence before another judge in the same cause and between the same parties (287); but evidence given in a summary proceeding cannot be admitted as evidence in a plenary one (288).

(285). Urban III. in Decret. Lib. II. Tit. XX. c. 25.

(286). Alexander III. *Ibid.* c. 19; Innocent III. *Ibid.* c. 42; Honorius III. *Ibid.* c. 48.

(287). Alexander III. *Ibid.* c. 11; Honorius III. *Ibid.* c. 50; Gregory IX. *Ibid.* Tit. XIX. c. 15.

(288). Innocent III. *Ibid.* Tit. XX. c. 38, 44.

# IX.

# THE CONCLUSION OF A CAUSE.

## The Judge's Office.

1. When all the evidence and exceptions have been exhausted, the suit is ripe for the judge's intervention. This, and the acts which immediately lead up to it, constitute the third and final stage in judgment, and are called the conclusion of the cause. The term conclusion of the cause is, however, a wide one, and is used in three senses—(1) to express all the concluding acts, *i.e.*, not only the judge's determination of a suit by sentence, but also the execution of the sentence, or the suspension of the sentence or stay of execution by appeal; (2) to express the concluding acts of the suit only; and (3) to express one of these concluding acts, which is technically called the conclusion or the second assignation, whereby the suit is concluded so far as the action of the parties is concerned, and there is no place for further discussion in judgment.

2. The concluding acts of the suit, each one of which is taken at the instance of one or other of the parties, consist of the following: (1) the assignment of a term to propound all acts, or, if the cause is summary, the assignment of a term to hear sentence on the first assignation (1). On the day assigned to propound all acts, if any exceptive or defensive matter is given in by the defendant and admitted by the judge, the conclusion is thereby rescinded (2). Otherwise there follows (2) the assignment of a term to conclude, or, in summary causes, of a term to hear sentence on the second assignation. This is technically called the conclusion, because it precludes further discussion by the parties. Then follows (3) the assignment of a day to hear

(1). Law's Forms 291.
(2). *Ibid.* 291 and 299.

informations, on which the judge is first informed by the advocates of the facts of the case, and then of the law which applies to them (3), the latter information being sometimes protracted over several court days. And lastly (4) the assignment of a term to hear sentence, which is called the *final* or *definitory* term (4). By the practice of the Arches Court as it formerly existed, one and the same term was usually assigned to hear sentence and to inform; and if the informations were not completed on that day, an assignation was made to inform on another day, and so on until the judge's mind was fully satisfied (5).

3. The judge's duty in dealing with a cause extends to three things—cognisance, determination, and execution (6). In exercising each he is bidden to remember that he is the representative of the Church, God's minister upon earth; and that his judgment is deemed to proceed from the face of God (7), who is before all things a God of righteousness and mercy (8). Hence (1), in taking cognisance of a cause, he is warned not to act rashly (9), nor to give way to anger (10), but carefully to

(3). Law's Forms 294; Innocent III. in Decret. Lib. II. Tit. XXVIII. c. 44.

(4). Innocent III. to the Bishop of Durham, A.D. 1203, in Decret. Lib. II. Tit. XX. c. 34, requires a judge to fix a peremptory term for the appearance of the parties to hear sentence. Ayliffe 446; Law's Forms 301.

(5). Law's Forms 308.

(6). Ayliffe 396.

(7). Tertullian Apol. 39: For [with us] judgment is conducted with the utmost care (cum pondere), as before tried men [certos] deputed from God's presence [de Dei conspectu]. Ayliffe 314.

(8). Ps. XI. 7; XLVIII. 10; LXXXV. 13; John XVI. 18; Jer. IX. 24; Rom. III. 5, 21; Neh. IX. 17; Exod. XXXIV. 7; Deut. VII. 9; 2 Sam. VII. 15; Ps. LXII. 12; LXXXVI. 5; 1 Tim. I. 2.

(9). Apost. Const. II. 51: Gratian Caus. II. Qu. 1. c. 20; Caus. XI. Qu. III. c. 45–64 and 66–72. Augustin *Ibid.* c. 49: A rash judgment generally does not hurt him who is rashly condemned, but it must needs hurt him who judges rashly. Ambros. *Ibid.* Caus. III. Qu. VII. c. 4.

(10). Apost. Const. II. 37: It is the duty of a bishop to judge rightly. . . . For some, through passion or envy, do insist on a false accusation against a brother, as did the two elders in the case of Susanna in Babylon, and the Egyptian woman in the case of Joseph; therefore, receive not

investigate every matter, sparing no pains to arrive at truth (11); (2) in receiving informations, to weigh conscientiously all the evidence and the arguments placed before him (12), taking into

rashly such accusations, lest thou take away the innocent and slay the righteous. Augustin ap. Gratian Caus. I. Qu. I. c. 82 : He is not outside the Church, and not of the body of the Church, who is excluded by the prejudice of the shepherd. Concil. Hispal. II. A.D. 619, *Ibid.* Caus. XV. Qu. VII. c. 1 : Many there are who condemn with tyrannical power, and not with canonical authority, those whom they have not heard ; and, as they exalt some by favour, so they cast down others out of hatred and ill-will, condemning upon the light breath of opinion those against whom they cannot prove crime. *Ibid.* Caus. XI. Qu. III. c. 76 ; Nicolaus, A.D. 866, *Ibid.* Caus. XV. Qu. VIII. c. 5 : Holy Scripture saith [Eccles. XI. 7] : Blame not before thou hast examined the truth, and before proof of an accusation suspend no one from communion ; for a man is not guilty simply because he is accused, but he is criminous who is proved to be such. Egbert's Excerpt. 49. Stevenson's Chronicle of the Abbey of Abingdon, II. XLIX : For centuries the clergy were the only representatives of the principle now so generally acknowledged, that until a man has been proved to be guilty he shall be held to be innocent. They went a step further, and declared that no man should be accuser, witness, advocate, judge, and executioner in his own cause.

(11). See *Spiritual Courts*, § 32. Pseudo-Isidor. ap. Gratian Caus. XXX. Qu. V. c. 11 : A judge ought to investigate everything, and spare no pains to get at the right of things ; patiently listening to interrogations, answers, and objections, that the fullest light may be thrown on the action of both parties ; nor ought the judge to obtrude his sentence on litigants until they themselves have exhaustively gone into everything, the action being kept going until he has got at the truth of the matter. Innocent III. to Archbishop of Canterbury in Decret. Lib. I. Tit. XXIX. c. 27 : A judge ought himself carefully to investigate all the steps which have been taken in judgment, as well those in the forefront as those in the middle and end, before giving sentence.

(12). Pseudo-Isidor. ap. Gratian Caus. II. Qu. I. c. 13 : Judge no one by suspicion, but first prove and then give a charitable sentence, and do not to others what ye would not have done to yourselves. *Id. Ibid.* Caus. XXX. Qu. V. c. 10 : We ought to condemn no one before a true and just proof, according to the apostle's words : Who art thou, O man, that judgest another? Innocent III. in Decret. Lib. II. Tit. XXVII. c. 18, rescinded a sentence, "because the judge had received the attestations of one party only."

account in so doing presumptions as well as direct proof (13); and (3) in giving sentence, to combine mercy with justice (14).

### Presumptions.

4. A presumption is such a strong suspicion as carries with it conviction in default of absolute proof (15), but yet a suspicion which may nearly always be rebutted by evidence. It may be either (1) legal or (2) personal. A legal presumption is a strong suspicion, which the law allows to turn the scale of proof, and to convert half-proof into full proof. A personal presumption is a presumption with regard to an individual which a prudent man cannot overlook. Still, neither personal nor legal presumptions taken alone are sufficient to constitute proof in a criminal cause (16).

(13). Clemens III. in Decret. Lib. I. Tit. IX. c. 6: A judge need not always fix his mind to one kind of proof, but may fashion the direction of his mind by confessions, depositions, allegations, and other matters done in his presence. See *Discipline Generally*, note 45. Ayliffe 314 says he may consider other things besides the *allegata atque probata*. *Id.* 446: All proofs are arbitrary and left to the judge's discretion, yet the judge's discretion ought to be consonant to law and equity. The judge may give credit to proofs that arise from single witnesses, or from presumptions and conjectures in some particular cases. Law's Forms 14.

(14). Honorius III. in Decret. Lib. I. Tit. XXXVI. c. 11: You should proceed according to the canonical and lawful rulings; . . . sometimes, also, an abatement may be made in severity, as may seem expedient, considering the state of the empire, and the number guilty of the same offence. . . . In those matters in which the law contains no direction, you must act with equity, always swerving to the side of mercy, according as persons and causes, places and times, seem to require. See *Spiritual Courts*, note 180.

(15). Ayliffe 276 says suspicions are of three kinds—(1) rash, (2) probable, (3) strong. The first deserve no credit, the second create a presumption, the third a legal presumption. Coelestin III in Decret. Lib. II. Tit. XX. c. 27 says carnal copulation may be proved (1) by witnesses who depose to having seen, or (2) by witnesses who depose to having heard of it, if consentient fame supplies a strong presumption, and there are other confirmatory circumstances.

(16). Innocent III. in Decret. Lib. II. Tit. XXIII. c. 14: On account of

5. Legal presumptions are of two kinds—(1) those termed simple presumptions of law, and (2) those termed necessary presumptions of law. Simple presumptions of law may be rebutted by proper evidence, whereas necessary presumptions, called also presumptions of law by law, allow of no rebutting (17). That an evil deed is done with an evil intent, or that one who flees from justice is guilty (18), are simple presumptions of law; but it used to be held, until the law was changed by the Council of Trent, and in this country by secular legislation (19), that it was a necessary presumption of law, against which no proof could be admitted, that consummation following upon a promise of marriage proved the consent necessary to establish wedlock (20).

6. Among personal presumptions may be included such inferences as to guilt or innocence as may be drawn from a successful or unsuccessful submission to ordeal, the ordeal being accepted as the judgment of God (21). Various kinds of ordeal

suspicion alone, however strong, we will not have any one condemned of so grave a crime [as heresy]. *Id.* to Bishop of Exeter, *Ibid.* Lib. III. Tit. II. c. 8; Ayliffe 277.

(17). According to Hieron. in Decret. Lib. II. Tit. XXIII. c. 3 and 9, youthful conduct is a presumption as to conduct in old age. Gregory *Ibid.* c. 6, *Id. Ibid.* c. 5: He who denies one only of two things admits the other. *Id. Ibid.* c. 7, 8: What is known abroad is presumed to be known at home. Alexander III. *Ibid.* c. 10: Stricter proof is required to prove an improbability. *Id. Ibid.* c. 12: Immorality is presumed, si testes deponant se vidisse aliquem solum cum sola nudum cum nuda in eodem lecto jacentem. Innocent III. *Ibid.* c. 16: Fitness is presumed for an ordinary position, not so for an extraordinary one. Lynd. 238, 152; Concil. Vas. A.D. 442, Can. 2: Where a man is known, the good do not so much want a testimonial, as the bad to be exposed. Sext. Lib. V. Tit. XII. c. 5: Every one is presumed to be good until he is shown to be bad. *Ibid.*: Doubtful facts ought to be interpreted charitably. Boniface VIII. *Ibid.* Lib. II. Tit. XIII. c. 1 says the presumption is against a person who claims what is contrary to common law. Lynd. 263, 108; Craisson, § 5740.

(18). Boniface in Decret. Lib. II. Tit. XXIII. c. 4.

(19). See *Wedlock*, § 5.

(20). Innocent III. in Decret. Lib. IV. Tit. V. c. 6; Gregory IX. *Ibid.* Tit. I. c. 30; Clemens III. *Ibid.* Tit. XVIII. c. 4; Ayliffe 276.

(21). Concil. Seligenstadt, Can. 14, A.D. 1022, ap. Gratian Caus. II. Qu. V. c. 25.

were formerly in use—that of the boiling water, that of the red-hot iron (22), another the ordeal of single combat (23), or that called *corsned*, or the dry-bread ordeal (24). Although ordeals were reprobated in the seventh century (25), yet they continued for long to be the sole data upon which judges decided doubtful cases (26), unless the position of the parties was such as to entitle them to clear themselves by compurgation (27).

(22). Gregory, A.D. 603, ap. Gratian Caus. II. Qu. V. c. 7; Concil. Tribur. A.D. 895, *Ibid.* c. 15 allows them. Athelstan's Law 5, A.D. 925: If any one make a promise or ordeal, let him come three nights before to the mass-priest who is to hallow it, and live on bread and water, and let him stand at his masses these three days, and make his offering, and go to housel the same day that he goes to ordeal, and take an oath that he is not guilty. . . . And if it be water ordeal, let the rope go 2½ ells below the surface. If it be iron ordeal, let it be three nights before the hand be undone. Law 8: We charge that no one go into the Church, after the carrying in of the fire with which the ordeal is to be heated, but the priest and the person to be tried; and let 9 feet be measured from the stake to the mark; . . . and if it be water ordeal, let it be heated till it boils. If it be a single accusation, let the hand be dipped to the fist only, to take out the stone; but if the accusation be threefold, then let it be dipped to the elbow. Alfred and Guthrum's Law 9, A.D. 878, forbids ordeals on feast or fast days.

(23). Nicolaus I. A.D. 867, ap. Gratian Caus. II. Qu. V. c. 22.

(24). Cnut's Law 5, A.D. 1017, quoted by Kemble, Saxons in England, I. 259: If a minister of the altar that has no friends be impleaded, let him clear himself with his kinsmen. And if he have no kin, let him clear himself with his associates, or fast for the ordeal by bread (corsned), and so fare as God may ordain.

(25). Gregory, A.D. 603, ap. Gratian Caus. II. Qu. V. c. 7; Stephen V. *Ibid.* c. 20; Lucius III. in Decret. Greg. IX. Lib. V. Tit. XXXIV. c. 8.

(26). Edward's Law 10, A.D. 1064: On the day that there is to be an ordeal, let the bishop's minister, with his clerks, come thither, and likewise the king's justice, with lawful men of the province, to see and hear that all be done with equity; and let those whom the Lord is willing to save by mercy, not by merits, be acquitted and depart in peace.

(27). Edgar's Law 62, A.D. 960; Cnut's Law 5, A.D. 1017, speak of them as allowed only to those who could not canonically purge themselves. Edward's Law 2, A.D. 1065: If any one be impeached for breaking a monastery, and was never defamed in times past, let him make his purgation with twelve lawful men, his own hand being the twelfth. If he have been defamed before, let him make his purgation with a triple number, *i.e.*, thirty-six lawful men. If he cannot have so many, let him

### Sentences and Matters Judicially Settled.

7. A sentence is the judge's pronouncement which either settles some disputed matter or disposes of a suit ([28]). One which settles a disputed matter arising in the course of a suit is termed an interlocutory sentence ([29]), such as a sentence decreeing the admission or amendment of a libel, or granting or refusing some delay term. One which disposes of the whole suit is termed a definitive or final sentence. There are, nevertheless, some interlocutory decrees which have the force of definitive sentences, and, by disposing of a disputed matter, settle the whole controversy ([30]); as, for instance, when exception is taken to the admission of the libel, the judge's decree ruling that it is inadmissible.

8. Interlocutory sentences differ from final sentences, and from interlocutory decrees having the force of final sentences in several points. (1) They may be revoked by the judge, because he has still authority in the cause; whereas final sentences may not, because the judge is then discharged of his office ([31]). (2) They may be given orally, whereas final sentences

go to the triple fire ordeal; and if he have in time past made satisfaction for theft, let him go to the water ordeal. Kemble, Saxons in England, I. 249, n. 2, after quoting Ethelred's Law 1, § 1: Let every freeman have a true *borh* (person responsible for his keeping the peace), who may present him to every right should he be accused, adds: The stranger or friendless man who has no *borh*, . . . instead of clearing himself by the oath of his friends, must run the risk and endure the pain of the ordeal. See *Discipline of the Religious Life*, note 58.

(28). Ayliffe 468.

(29). Ayliffe 487; Devoti Inst. Lib. III. Tit. XIV. § 2: An interlocutory sentence may, however, have the force of a definitive sentence if it ends the case. Law's Forms 302.

(30). Law's Forms 303.

(31). Nicolaus I. A.D. 864, ap. Gratian Caus. VI. Qu. IV. c. 6: What has once been definitively settled and deliberated upon upon sworn evidence, may not be altered by any rehearing, except by a superior authority. Ayliffe 486: Although a judge cannot alter his sentence, yet an ordinary judge may declare it to be a nullity. Craisson, § 5962.

must always be in writing (32) (3) By the civil law there is no appeal from them, except in cases where they cannot be set right by the definitive sentence; whereas all final sentences may be appealed from within the prescribed time (33). By the canon law, however, interlocutory as well as final sentences may be the subject-matter of appeal, lest oppression should be practised under specious pretences (34).

9. To be canonically valid, a definitive sentence must fulfil the following conditions: (1) It must be drawn up in writing (35), unless it is given in audience, either by a bishop in person (36), or by the guardian of the spiritualities during the vacancy of the see (37). (2) It must be pronounced and read (38). And (3) the judge must be seated at the time, otherwise it is not a formal or *ex cathedrâ* judgment. These requirements do not, however, apply to summary causes (39). Further,

(32). Ayliffe 487.

(33). *Ibid.* 487.

(34). Const. 6 Mepham, A.D. 1328: A certain statute is said to have been made [viz., the rule of the civil law], in which it is forbidden to appeal from any judicial grievance before definitive sentence. . . . Now we do wholly lay aside this statute, and whatever has been done in consequence of it, as being made for depriving the oppressed of the remedy of appeal, though covered over with specious pretences. See *Acts in Judgment*, notes 80, 92, 217.

(35). Cod. ap. Gratian Caus. II. Qu. l. c. 8 and 9; Boniface VIII. in Sext. Lib. II. Tit. XIV. c. 5, says that a sentence which is (1) not in writing, or (2) is not read out by the judge, or (3) is not read by the judge seated, is an absolute nullity. The sentence is usually drawn up by the proctor of the plaintiff, the judge inserting the word "justice" in his own handwriting, but by custom it is drawn up by the registrar of the Court of Arches. Laws Forms 309.

(36). Cod. ap. Gratian Caus. XI. Qu. l. c. 45; Sext. Decr. Lib. II. Tit. XIV. c. 5.

(37). Innocent III. in Decret. Lib. II. Tit. XX. c. 45.

(38). Sext. Lib. II. Tit. XIV. c. 5; Ayliffe 488. The sentence is said to be read ex periculo=ex libello. Devoti Inst. Lib. III. Tit. XIV. § 7, or ex breviculo.

(39). The judge, when judging in the tribunal, which was an elevated place, is described as qui tribunali praeest, qui pro tribunali cognoscit. Causes which were not disposed of by the judge from the elevated tribunal,

(4) it must be given in accordance with elementary justice (40), therefore not through fear or favour (41), and be in agreement with the canons (42). (5) It must be given in presence of the parties, or, at least, they must have been cited to hear it (43). (6) The defendant must be amenable to the jurisdiction (44). (7) It must be so framed that it corresponds with the libel (45); and, lastly, (8) it must be given in the presence

were said to be disposed of on a level (*de plano*), which is the term applied to summary procedure. Devoti Inst. Lib. III. Tit. XIV. § 4. Hence Boniface VIII. in Sext. Lib. II. Tit. XIV. c. 5, declares a sentence a nullity not given by a judge sitting. The bishop's seat is the sign of the bishop's jurisdiction. See *The Diocese*, § 3; *Canonical Procedure*, § 9.

(40). Alexander III. in Decret. Lib. II. Tit. XXVII. c. 22 declares the sentence void if the process in a cause is null and void, or if a sentence is pronounced for money or other consideration, or if a sentence is pronounced against a contumacious person before the return of contumacy has been received. *Id. Ibid.* c. 28: If the proper order of proceeding has been disregarded.

(41). Pseudo-Isidor. ap. Gratian Caus. XI. Qu. III. c. 89: An unjust udgment, or an unjust definition, given through fear, or by command of a king, or any bishop or powerful man, does not hold good. Gregory *Ibid.* c. 66: Even a just sentence must not be given for reward.

(42). Gregory, A.D. 593, in Decret. Lib. II. Tit. XXVII. c. 1: A sentence contrary to the laws and canons is *ipso jure* void, even though it be not suspended by appeal. Alexander III. to the Archbishop of York, *Ibid.* c. 9: When a cause is committed without appeal, and an iniquitous sentence is passed, it should be rendered void. Innocent III. *Ibid.* c. 13, however, says that if the procedure has otherwise been regular, this only applies when the sentence is contrary to the [definite] right of a constitution, not simply contrary to the [indefinite] rights of a litigant. *Ibid.* c. 21; Lynd. 76: Nor ought penalties to exceed the requirements of a case. *Ibid.* 73; Ayliffe 310.

(43). Stat. Eccl. Ant. A.D. 505, Can. 30: Let judges of the Church take care not to give sentence in the absence of him whose cause is being inquired into, because such a sentence is void. Clemens III. in Decret. Lib. II. Tit. XXVII. c. 10; Innocent III. *Ibid.* c. 18; Sext. Decr. Lib. II. Tit. XIV. c. 5. Since Const. 25 Otho, A.D. 1237, this is covered by the original citation whenever a proctor has been appointed. Lynd. 292; Law's Forms 304.

(44). Alexander III. in Decret. Lib. II. Tit. I. c. 4; Innocent III. *Ibid.* Lib. . Tit. IV. c. 3.

(45). Concil. Lat. IV. A.D. 1215, Can. 8, in Decret. Lib. V. Tit. I. c. 24:

of witnesses who may be able if necessary to prove it (46). A sentence which fails to fulfil these conditions is a nullity *ipso jure* (47); nevertheless, a sentence is presumed to be good until it is shown to be bad (48), at least, if it has been allowed to become a matter judicially settled (*res judicata*) (49).

10. The office of an ordinary judge, in giving sentence in a criminal cause, usually includes three things, viz. (1) the act of the judge in determining the facts, and herein he acts as *cognitor* or *auditor* (50); (2) the act of the judge in determining the punishment, and herein he acts as *assessor* (51), representing the canonical knowledge of the synod; and (3) the act of the judge in declaring the sentence, and herein he acts as the representative of authority in the Church, either by commission or by custom (52). In delegation, each of these functions may be separately committed to a different person, or to a different group of persons.

According to the form of the judgment (libel), let the form of the sentence also be regulated. Lynd. 122; Ayliffe 488; Craisson, § 5952.

(46). Innocent III. in Decret. Lib. III. Tit. XX. c. 28, says that neither the single judge's word, nor yet his writing, can be accepted as worthy of credit, unless attested by two or three witnesses. Law's Forms 78, who states that in some foreign countries it is unusual to have it attested.

(47). Sext. Lib. II. Tit. XIV. c. 5; Lynd. 351: A sentence is a nullity if passed in the absence [other than contumacious] of the principal party, or if the witnesses produced have not been admitted [being unexceptionable], or if witnesses have been improperly received, or, in a plenary cause, if judgment has been given without contestation of suit. In any such cause, the defendant, being called upon to show cause why the sentence should not be ordered for execution, may allege the nullity of the same, and specify particulars. Lynd. 265; Stephen's Eccl. Stat. 133. An appeal on the ground of nullity may be made at any time within thirty years.

(48). Innocent III. in Decret. Lib. II. Tit. XXVII. c. 16; Lib. I. Tit. IX. c. 6; Lynd. 266, 263.

(49). Innocent III. in Decret. Lib. II. Tit. XXVII. c. 13.

(50). See *Spiritual Courts*, note 16; Craisson, § 5758.

(51). Craisson, § 5766: It is the business of an assessor to watch over the investigation, to keep the judge informed as to the law, and to see that the judge's rescripts do not violate it. For these acts he is held responsible, unless he publicly protests.

(52). See *Ecclesiastical Severity*, note 38.

11. In determining the facts, it is a rule of law that in criminal causes, before a judge can condemn and punish, the evidence ought to be clearer than noonday (53). In civil causes, where less evidence suffices, should the depositions of the plaintiff's and defendant's witnesses contradict one another, preference should be given to those witnesses who are more worthy of credit, or who depose to what is more probable (54). As a general rule, where the rights of the parties are equally balanced, the decision ought to be given in favour of the defendant (55) or possessor (56); and in causes concerning matrimony, freedom, dowry, and wills, the presumption is in favour of their validity (57).

12. When the punishment is prescribed by a canon, the sentence is said to be a *sentence of law*. When it is left to the judge's discretion, it is said to be *the judge's sentence*. When a sentence of law is prescribed by a canon as a sentence *to be* passed (*sententia ferenda*), it is said to be *awarded* by the judge. On the other hand, when it is prescribed by a canon as a sentence *already* passed (*sententia lata*), it is said to be declared by the judge (58).

13. A sentence of law already passed takes effect *ipso jure*, without any other sentence of a judge (59), so that, directly the forbidden act is done, the offender, as regards himself and in *foro interno*, is *ipso facto* affected by it. So far as others are concerned, however, and in *foro externo*, it savours of commination, and is not *ipso facto* incurred before the judge's declaratory sentence or denunciation by name (60), unless the

(53). See *Acts in Judgment*, note 185.

(54). Cap. Reg. Franc. ap. Gratian Caus. IV. Qu. II. c. 3; Innocent III. to Bishops of London and Ely in Decret. Lib. II. Tit. XX. c. 32.

(55). Rule of Law 11 in Sext. Lib. V. Tit. XII. c. 5.

(56). Rule of Law 15, *Ibid.* Lucius III. quoted *Acts in Judgment*, note 190.

(57). Gregory IX. in Decret. Lib. II. Tit. XXVII. c. 26.

(58). See *Ecclesiastical Severity*, § 9.

(59). Boniface VIII. in Sext. Lib. V. Tit. II. c. 19; Const. 6 Peckham, A.D. 1281; Lynd. 143, 144, 217, 254, 258, p. 146, distinguishes a benefice vacant *de jure* and *de facto*. Const. 5 Boniface, A.D. 1261.

(60). Urban II. A.D. 1095, ap. Gratian Caus. IX. Qu. I. c. 5, mentions

crime is notorious (61). Meantime, the offender is called a *tolerated* person, his ecclesiastical acts being valid in relation to others, but unlawful as regards himself (62). He need not, therefore, if it is a sentence of *ipso jure* excommunication, be shunned as one excommunicate; but any one who is cognisant of his offence is justified in treating him as such (63).

14. Doubts sometimes arise as to whether a sentence prescribed by a canon is a sentence already passed, or a sentence to be passed. As a general rule, a sentence already passed is understood (1) if the words *ipso jure* or *ipso facto* are contained in the canon; or (2) if such words as *forthwith, immediately*, are used; or (3) if the present or the past tense is used, as *He is excommunicated*, or *Let him know that he is excommunicated;* and sometimes (4) if the imperative is used. On the other hand, when (1) simply minatory words are employed, as *We command under pain of excommunication;* or (2) when words denoting the future are used, as, *If he shall offend again, let*

those excommunicate, but not *nominatim*. Concil. Westminster A.D. 1200, Can. 14: We ordain that such as are excommunicate by name be avoided by all. Decret. Lib. I. Tit. XXXI. c. 2 directs that a man shall not be warned by name not to communicate, unless the party is able to prove a good cause. Innocent III. *Ibid.* Lib. II. Tit. XXVIII. c. 53 says denunciation does not bind the person excommunicated more than he was bound before. Lib. V. Tit. XXXIX. c. 29, and Lib. II. Tit. XXVIII. c. 53; Const. 20 Edmund, A.D. 1236; Boniface VIII. in Sext. Lib. V. Tit. II. c. 19: We declare the goods of these heretics confiscated *ipso jure*, but the execution of a confiscation of this kind ought not to take place before a sentence has been promulgated by the bishop of the place, or some other ecclesiastical person. Conf. Augustin ap. Gratian Caus. XXIII. Qu. IV. c. 24; Const. 3 Winchelsea, A.D. 1298; Const. 10 Arundel, A.D. 1408: A declaratory sentence requires to be preceded by a citation, and, in cases required by law, by a monition. Const. 11 Boniface, A.D. 1261; Const. 12 Stratford, A.D. 1342; Lynd. 260, 264. In many cases the publication of the law acts as a monition, and the disregard of it, after publication, is contumacy. Lynd. 264, 268, 13, 74, 94, 107; Law's Forms 124.

(61). Lynd. 147, 187, 224.

(62). Nicolaus, A.D. 866, ap. Gratian Caus. XV. Qu. VIII. c. 5: Communion must be received from a criminous priest until he is condemned by the judgment of the bishops.

(63). Craisson, § 6497, 6505. See *The Sacraments Generally*, note 60.

*him be excommunicated*; or (3) if doubt exists as to which of the two kinds of sentence is intended, the sentence is understood as one to be passed.

15. Whenever the judge has a discretion in awarding punishment([64]), he is required to bring two qualifications to the exercise of it, viz., (1) justice, to make the penalty proportionate to the offence([65]), and (2) mercy, to make it accord with the

(64). Augustin ap. Gratian Caus. XXIII. Qu. IV. c. 25; Ambros. *Ibid.* Caus. XI. Qu. III. c. 68; Gregory *Ibid.* c. 70; Hieronym. *Ibid.* c. 79; Isidor. Sext. III. 52, 4: Every one who judges rightly, holds the balance in his hand, and carries in his thought both justice and mercy. Concil. Chelsea A.D. 787, Can. 13. Ethelred's Law 8, A.D. 1014 (in Hook's Lives I. 477): A judge ought to acquit himself in all respects, both as to mercy and judgment, so as to decree satisfaction in proportion to the crime, according to right knowledge, and yet to do so in measure for mercy's sake. Some crimes are deemed by good judges to be satisfied according to strict right, others to be pardoned for the mercy of God. Judgment ought to be without respect of persons, that they may not spare to pronounce common right against rich and poor, against friend and enemy. He who oppresses the innocent and acquits the guilty for money, love, or hatred, or out of faction, shall be oppressed by the Almighty. . . . Wicked judges do often pervert judgment, and not finish a cause till their own desires are satisfied; and when they judge not deeds, but study for bribes, they are like greedy wolves in the evening, which leave nothing until the morning. . . . An angry judge cannot attend to the just satisfaction of the doom book, for, through the blindness of his fury, he cannot discern the right, though never so clear. Const. 24 Othobon, A.D. 1268, says that a man of eminent station and large estate may more safely take truth for his guide than another man. Const. 1 Peckham, A.D. 1279; Honorius III. in Decret. Lib. I. Tit. XXXVI. c. 11; Clem. Lib. II. Tit. I. and Lib. V. Tit. VIII. c. 1; Lynd. 136, 153, 232, 250.

(65). Gregory in Decret. Lib. II. Tit. XXVII. c. 1: A sentence contrary to law and the canons is *ipso jure* invalid. Concil. Ensham. Can. 7 and 32, A.D. 1009: Let every fact be cautiously scanned, and let judgment be according to the fact, and moderation according to the quality, so that it may be gentle in relation to God, tolerable in relation to the world; and let him that judges others consider what he requests for himself when he says: Forgive us our trespasses. Const. 10 Stratford, A.D. 1342; Const. 5 Thorsby, A.D. 1363; Augustin ap. Gratian Caus. XXIV. Qu. I. c. 21; Lynd. 212, 261, 286, 343. Leo ap. Gratian Caus. XXV. Qu. I. c. 16: We ought on no account to exceed the punishments which our ancestors have prescribed, either in holy canons or in the world's laws.

circumstances of the offender (66). On the one hand, it is sacrilege to award an excessive penalty (67), and the judge who is guilty of so doing is *ipso facto* suspended for a year (68). On the other hand, where severity is needed, the judge is not to be blamed for using it (69). Still, since the judge's discretion should be the discretion of a good and righteous man, it should, if anything, err on the side of mercy (70). If it fails to do so, it may be reviewed on appeal by the synodal superior (71). To justify his sentence before the Church, and to show "that he does not make the suit his own" (72), a judge usually states his reasons in judgment, but the only part of the judgment which is binding is the decision (73)

16. If no appeal is lodged within the time allowed for appealing (74), the controversy becomes at its expiration a *judicially settled* matter (*res judicata*), and cannot again be disputed in

(66). Honorius III. in Decret. Greg. IX. Lib. I. Tit. XXXVI. c. 11: In those matters which are not provided for by law expressly, do you proceed according to equity, always inclining to the side of humanity. Lynd. 261, 276; Alexander III. to Bishop of Exeter, *Ibid.* Lib. V. Tit. XII. c. 6.

(67). Hieronym. ap. Gratian Caus. XXIV. Qu. III. c. 4: Should any one be repelled by a wrongful judgment of those who preside over a Church, . . . he suffers no damage thereby. Rabanus, *Ibid.* c. 5, quoted *Excesses*, note 140. Hieronym. ap. Gratian Caus. XI. Qu. III. c. 57: If any one calls right wrong and wrong right, both alike are an abomination before God. See *Excesses*, § 20.

(68). Concil. Lugdun. A.D. 1245, in Sext. Lib. II. Tit. XIV. c. 1.

(69). Augustin ap. Gratian Caus. XXIII. Qu. IV. c. 38–42.

(70). Justinian *Ibid.* Caus. II. Qu. VI. c. 28; Alexander III. in Decret. Lib. I. Tit. XXIX. c. 4; Lynd. 274, 290, 293.

(71). Lynd. 125, 134, 208, 254 says that his discretion must be that of a good man, and his synodal superior is the judge of its goodness.

(72). Ayliffe 312. But Innocent III. in Decret. Lib. II. Tit. XXVII. c. 6 says: It is usual for a judge not to express in his judgment all the considerations which moved him thereto.

(73). Ecclesiastical Courts Commission, 1883, vol. II. 337, 365.

(74). Innocent III. A.D. 1208, in Decret. Lib. I. Tit. VI. c. 32: It has become a judicially settled matter (transiit in rem judicatam), not having been suspended by legitimate appeal for ten days. Innocent III. A.D. 1199, *Ibid.* Lib. II. Tit. XXVII. c. 15, says that it becomes a judicially settled matter if notice of appeal is not lodged within ten days.

judgment. The effects of a cause becoming a judicially settled matter are (75): (1) the sentence may be made the ground of an action for execution, or of an exception in a subsequent action (76); (2) it decides the rights of the parties between themselves, even though it is founded upon error (77); (3) it is taken for judicial truth, so that it decides the rights of third parties who are privy to the same suit, or derive their rights from one of the litigants (78). If, however, new facts are forthcoming to show that the decision was given in error (79), redress may be had in the form of a fresh action praying for restitution (80). This action, it is said, may be brought at any time within thirty years, and is allowed even against a papal sentence (81); but in this country such an action seems to be

(75). Ayliffe 489: The judicially settled matter (*res judicata*) is one thing, the judicial settling (*res judicans*) another. For the judicial settling is the sentence itself, and this puts an end to the controversy. But the judicially settled matter is the cause, which, by the sentence, receives an end of being controverted any further. Devoti Lib. II. Tit. XIV. § 12.

(76). Boniface VIII. in Sext. Lib. II. Tit. XII. c. 2.

(77). Hilary, A.D. 465, ap. Gratian Caus. XXXV. Qu. IX. c. 3: In future sentences, causes, and subscriptions, that in presence of a synodal judgment there may be no opening for fraud. Gregory *Ibid.* c. 5: Things which have been reasonably disposed of and decided ought not afterwards to be disturbed. Lynd. 275: A judicially settled matter is taken for truth. Hobart 144.

(78). Innocent III. in Decret. Lib. II. Tit. XXVII. c. 13; Ayliffe 253; Devoti Lib. III. Tit. X. § 2; Craisson, § 5953.

(79). Innocent III. in Decret. Lib. II. Tit. XXVIII. c. 46.

(80). Leg. 4 Cod. de Re. Judic. c. 21 de Sentent.; Pseudo-Isidor. ap Gratian Caus. II. Qu. VI. c. 10: Wherefore to this Holy See the aforesaid privileges have been specially conceded, . . . so that from it the oppressed may receive succour, and those unjustly condemned, restitution. Innocent III. to Bishops of Ely and Rochester, in Decret. Lib. I. Tit. XLI. c. 3, says that a Church injured in a suit through an omission of necessary proofs, may seek to be restored to its former position. Ayliffe 270: A sentence may be demanded to execution which is not suspended by an appeal, or by a suit of *restitutio in integrum.*

(81). Gregory ap. Gratian Caus. XXXV. Qu. IX. c. 4: The sentence of the Apostolic See is always drawn with such moderation . . . that it does not require retractation, nor is it necessary that it should be altered, unless, perchance, it has been so given that it may be retracted or changed

now barred, as well by statutes of limitations as by special legislation (82).

17. Certain sentences never become matters judicially settled (83). Such are (1) sentences in matrimonial causes, which are never final during the lifetime of the parties (84); (2) sentences given by fraud or mistake (85), by judges possessed of no jurisdiction (86), or contrary to elementary justice (87), which are null and void *ipso jure;* and (3) sentences in criminal causes, based on an erroneous statement of the facts (88).

according to the tenor of the previous condition. Innocent III. in Decret. Lib. I. Tit. XLI. c. 5 permits a sentence of his predecessor, Eugenius, to be called in question thus indirectly.

(82). 2 and 3 Gul. IV. c. 92 prohibited the granting in future of commissions of review, which appear to include *restitutiones in integrum.* See below, § 39 and note 47.

(83). Schmalzgrueber and Craisson, § 5960, enumerate six cases: (1) when the sentence is a nullity itself, because given contrary to natural justice, as without a hearing; (2) matrimonial cases; (3) in benefice cases, when there are any new grounds (Decret. Lib. II. Tit. XXVIII. c. 46); (4) when an unjust censure has been pronounced in alleging reasons for its removal (Innocent III. in Decret. Lib. I. Tit. XXIX. c. 36; Honorius III. *Ibid.* Lib. V. Tit. XXXVII. c. 13; Concil. Lat. IV. A.D. 1213, Can. 47; *Ibid.* Lib. V. Tit. XXXIX. c. 48); (5) if the sentence is based on false witness; or (6) depends on the party's necessary, not his voluntary oath.

(84). Alexander III. to Bishop and Archdeacon of Norwich in Decret. Lib. II. Tit. XXVII. c. 7; Clemens III. *Ibid.* c. 9. See the arguments in the Duchess of Kingston's case, XX. State Trials, 443. Ayliffe 492; Devoti Lib. II. Tit. II. § 156.

(85). Alexander III. in Decret. Lib. II. Tit. XXVII. c. 22 says if the witnesses are conspirators, who were allowed against the defendant's protest. *Id. Ibid.* Tit. XX. c. 9 says if it is shown that the witnesses had been bribed. Innocent III. *Ibid.* Tit. XXV. c. 6 says that exception may be taken to a judgment based on a forged instrument twenty years afterwards.

(86). For instance, by a judge excommunicate. Decret. Lib. II. Tit. XXVII. c. 24; Concil. Lat. IV. Can. 3, A.D. 1215; *Ibid.* Lib. V. Tit. VII. c. 13; Ayliffe 271.

(87). Such as a judgment given for money (Gregory ap. Gratian Caus. XI. Qu. III. c. 66), or given in the absence of the party, or without a hearing (Decret. Lib. II. Tit. XXVII. c. 24). Ayliffe 492: A sentence never passes in rem judicatam when there is a constat by an evidence of fact touching the iniquity of such sentence. Ayliffe 84.

(88). Augustin ap. Gratian Caus. XI. Qu. III. c. 50: How can it damage

### Execution.

18. Sentence having been given, and the time allowed for appealing having expired ([89]), it is open to the successful litigant to apply for the sentence to be ordered for execution ([90]), or, otherwise, for it to be signified to the civil power, without which his intention in judgment would be frustrated. Some sentences execute themselves, being rather acts than sentences, such as a sentence of excommunication ([91]), which, when publicly declared, excludes from the communion of the Church everywhere ([92]). Others require the judge's intervention, which may be obtained either (1) by action, or (2) by imploring his office ([93]). The latter is the usual method in this country.

a man if human ignorance will not allow his name to be read out from the book [of diptychs], if an iniquitous conscience does not delete his name from the book of life? Stat. Eccl. Ant. A.D. 505, Can. 28; *Ibid.* c. 35: The unjust condemnation of bishops is a nullity, and must be revoked by the synod. Concil. Tolet. IV. A.D. 633, *Ibid.* c. 65: A bishop, priest, or deacon unjustly deposed [by one synod] may be found innocent in a second synod. Innocent I. *Ibid.* Caus. XXXV. Qu. IX. c. 5, A.D. 414, rescinds sentences of condemnation pronounced by his predecessors, because they were based on false evidence as to the facts. Nicolaus I. A.D. 862, *Ibid.* c. 6: We do not dispute that the sentence of the Roman See may be changed for the better, if it has been based on anything surreptitious. Innocent III. A.D. 1198, in Decret. Lib. II. Tit. XXVII. c. 12, repeats the above. Devoti Lib. III. Tit. XIV. § 13; Ayliffe 491. In this country, commissions of review are now forbidden. See below, § 39.

(89). Lynd. 107; Ayliffe 270.

(90). Law's Forms 313 says that the practice of ordering a sentence for execution has grown rare in the now defunct Court of Arches.

(91). Innocent. III. to Bishop of Ely in Decret. Lib. II. Tit. XXVIII. c. 53.

(92). Concil. Nic. A.D. 325, Can. 5: Let sentence according to canon prevail, that clergymen or laymen, being excommunicated by some, be not received by others. Apost. Can. 11: If any one prays with a person excommunicated, let him be suspended. Apost. Can. 13, quoted *Ecclesiastical Severity*, note 81.

(93). Lynd. 107, 94, 351; Law's Forms 312, 313. Ayliffe 272 says that the judge's intervention by office is preferable, because it requires no libel, and is the only kind practised in this country, but that a citation is always required, if either the judge's successor or the defendant's successor is concerned.

Action requires a libel; but in either case the application may be met by an exception of fraud (94) or nullity (95). Others, again, require to be signified to the temporal authorities, such as excommunication and contumacy, if outward coercion is to be employed to give them effect.

19. Although as a general rule no inferior judge can call in question the acts of his superior, yet, if in a cause pending before an inferior judge any sentence or act of a superior judge is objected by the defendant, and the nullity of such act is alleged by the plaintiff, the inferior judge may indirectly admit the nullity if it is proved before him, by giving sentence, or ordering the sentence for execution, as though such null sentence or null act had never been exhibited (96). The term for execution is called the term executory (97). In criminal causes, execution follows at the expiration of the fatal term. In civil cases, four months are usually allowed (98), unless a shorter time is prescribed by the judge (99). If the sentence is not voluntarily obeyed (100), and execution becomes necessary, it is the duty of the ordinary to assist a judge dele-

(94). Alexander III. to Archbishop of York in Decret. Lib. II. Tit. XXVII. c. 5.

(95). Alexander III. to Archbishop of York, *Ibid.* Lib. II. Tit. XXVII. c. 9, says it is a nullity if manifestly unjust. Lynd. 157 : Things which are done contrary to law are taken for things not done. The exception to the sentence may be made on the ground that it is a nullity, because it is contrary to a previous sentence. Law's Forms 313, 311, 106, 79 ; Ayliffe 273 says that the exception of nullity propounded before a judge inferior to him who pronounced the sentence does not hinder the execution.

(96). Law's Forms 312. In a recent case (in 1896) a secular judge declined to pronounce a sentence of nullity of marriage between a woman and a man whom she had married whilst her first husband was living, although the first husband was produced in court, on the ground that a jury had found that the first husband was dead when she married the second one.

(97). Innocent III. in Decret. Lib. II. Tit. XXVII. c. 15 ; Ayliffe 27.

(98). Devoti Inst. Lib. III. Tit. XIII. § 4.

(99). Innocent III. in Decret. Lib. II. Tit. XXVII. c. 15.

(100). Coelestin III. in Decret. Lib. II. Tit. I. c. 10.

gate by lending his office for that purpose (101), and of all other ordinaries to assist him in like manner (102). A delegate can only order his sentence for execution when he has been authorised to execute the sentence, as well as to decide.

20. As every one who fails in a suit, or who fails to sustain an exception made in a suit, is deemed to have in that respect acted unjustly, the loser in a dilatory or peremptory exception is ordinarily punished by being condemned in the costs connected therewith (103), and the loser in the principal cause or main issue, in the costs of the suit (104), unless it appears to have been vexatiously brought or defended. Payment of costs may be obtained by means of the judge's office, if they have been already taxed, or the loser may be convened by action (105). Expenses incurred before the suit was judicially contested cannot, however, be recovered as a matter of course, because the suit is only set up by contestation, but they may be recovered by request made to the judge. Those incurred after contestation he may award without request (106), and may compel their payment by ecclesiastical censures (107). A judge who omits or refuses to award costs, if a party has moved for them, may be required to pay them himself (108).

21. When spiritual coercion is lawfully employed in the maintenance of discipline, any disregard of it is called contumacy (109),

(101). Alexander III. to Bishop of Norwich in Decret. Lib. I. Tit. XXIX. c. 7 ; Ayliffe 271. See *Acts in Judgment*, note 248.

(102). See *Spiritual Courts*, note 163.

(103). Innocent III. in Decret. Lib. II. Tit. XIV. c. 5, 6.

(104). Gregory IX. in Decret. Lib. I. Tit. XXXIV. c. 17.

(105). Ayliffe 273.

(106). Ayliffe 274.

(107). Law's Forms 320.

(108). Ayliffe 274.

(109). Luke X. 16 ; Matt. XVIII. 15 ; 1 Cor. V. ; 1 Tim. I. 20 ; 2 Tim. IV. 13 ; 2 Thess. III. 14 ; Concil. Agath. A.D. 506, Can. 2 ap. Gratian I Dist. L. c. 21 : Let contumacious clergy, so far as the degree of their rank (dignitatis ordo) permits, be corrected by the bishops. Stat. Eccl. Ant. A.D. 505, *Ibid.* I. Dist. XC. c. 1 : Let the bishop reduce discordant clergy to harmony. Such as disobey, let the synod condemn. Socrates II. 40 says that the synod of Selucia, A.D. 359, deposed Bishop Patrophilus for contumacy, in

or contempt of the keys (110), and such contumacy, if persisted in, becomes obduracy (111). Thus, it is contumacy not to appear to a citation when lawfully convened (112), and also to disregard a judicial sentence. By the canon law, the usual mode of punishing contumacy is by excommunication (113), in a civil case sometimes by sequestration (114), and, when the contumacy is that of not appearing to a citation, by proceeding to sentence (115) or by interdict (116). In this country, a person excommunicated, and continuing for forty days excommunicate without coming to satisfaction, is held to display obduracy, or contempt of the keys, to such an extent as to constitute a civil offence, which renders him liable to imprisonment (117); but in

not presenting himself to answer a charge made against him by a presbyter. Concil. Ilerd. A.D. 523, Can. 10: Those who, when excommunicated for any fault, refuse to go out of the Church for the offence of contumacy, ought to be more tardily admitted to pardon. Gregory *Ibid.* I. Dist. LXXXI. c. 29: Unless [the archdeacon] obeys your command, we will that he be deprived of his order.

(110). Honorius III. in Decret. Lib. V. Tit. XXXVII. c. 13; Gregory IX. *Ibid.* Tit. XXVII. c. 10.

(111). Lynd. 264 says obduracy is the act of a will resisting monitions, or resisting grace; that sometimes obduracy is a punishment by which a man is not a fit subject for grace. Law's Forms 128.

(112). See *Acts in Judgment*, § 14.

(113). Concil. Milev. A.D. 418, ap. Gratian Caus. II. Qu. VI. c. 19, directs a man to be excommunicated who contumaciously refuses to obey a citation. Ayliffe [190]. By 53 Geo. III. c. 127, excommunication is now forbidden to be awarded for obduracy. Instead thereof, after forty days the contumacious person may be imprisoned. Laws Forms, p. 129.

(114). Alexander III. to the Abbot of Remess and the Archdeacon of Ely in Decret. Lib. II. Tit. XIV. c. 2.

(115). Alexander III. to Bishops of Exeter and Winchester and the Abbot of Ford in Decret. Lib. II. Tit. XIV. c. 3; Urban III. *Ibid.* c. 4.

(116). Alexander III. in Decret. Lib. I. Tit. XXIX. c. 11.

(117). Cnut's Law 4, A.D. 1018: We command that apostates, and such as are outlawed by God and man, be gone off the land, unless they will submit and make deep satisfaction. Edward's Law 7, A.D. 1064: If the guilty person decline, or contumaciously despise the sentence of the bishop's court, let complaint of it be brought to the king after forty days. Const. 4 Boniface, A.D. 1261: If the customary writ de excommunicato capiendo be denied when it is required in a case where it ought to be

such a case imprisonment can now only be inflicted for a period not exceeding six months, by application to the civil authorities, or, as it is said, by signifying the sentence to them; and no ordinary below the degree of a bishop is competent to make such signification (118). Excommunication is also forbidden to be awarded as the punishment of contumacy (119).

### Appeals.

22. To prevent injustice being done by hasty or ill-considered sentences, or by the prejudice and imperfect knowledge of a judge, the remedy of appeal is provided (120). In the first three centuries, what would be properly called an appeal was unknown. There were no regularly constituted courts; Christian principles had not as yet settled down into uniform laws; and the practice of different Churches varied. Some bishops then made an excessive use of excommunication, with the result that application was made to neighbouring bishops to procure a rectification of their sentences (121). Thus was established a kind of informal appeal from the individual bishop to the Church of the province.

23. When, on the conversion of the Empire, the Church was permitted to decide civil matters, arrangements became necessary for dealing with such matters on appeal. Regulations were accordingly made for that object by the Councils of Con-

granted according to the approved custom. 9 Ed. II. St. 1, c. 12, A.D. 1315, mentions forty days. Const. 13 Stratford, A.D. 1343; 5 Eliz. c. 23, sec. 10, saved and reserved to all "having authority to certify any person excommunicated, like authority to accept and receive the submission," &c. 2 and 3 Will. IV. c. 93; Lynd. 264, 348.

(118). Lynd. 350; Law's Forms, p. 135.

(119). See *Spiritual Courts*, note 127.

(120). Pseudo-Isidor. ap. Gratian Caus. II. Qu. VI. c. 1: It is lawful for an appellant to assist a damaged cause by the remedy of appeal. *Ibid.* 7, 8, 9, 10, 12; Ayliffe 72; Devoti Inst. Lib. III. Tit. XV. § 1.

(121). Concil. Chalcedon A.D. 451, Can. 23; Van Espen Pars. III. Tit. X. c. 1, sec. 5. See *Excesses*, note 140; Ecclesiastical Courts Commission, 1883, vol. II. 127.

stantinople (122) and Chalcedon (123). Ultimately, by the Code of Justinian, a civil sanction was given to appeals from the bishop to the metropolitan, and from the metropolitan to the patriarch, with ultimate recourse to the emperor himself (124). The place of the emperor was, however, soon taken in the West by the pope, partly owing to the fact that after 476 A.D. there was no longer a Western emperor, partly owing to the preference among Christians for a spiritual to a temporal judge.

24. In its widest sense an appeal may be defined to be a provocation from the decision or action of the authorities of some limited portion of the Church to the decision or action of the authorities of a larger section of the same, with a view to obtain redress for some grievance sustained, or to prevent the infliction of one which is apprehended. A grievance, nevertheless, may be sustained in two ways—either by a judicial sentence or by an official act. Hence appeals are of two kinds —(1) those called judicial, and (2) those called extra-judicial (125). A judicial appeal is an appeal from a judicial sentence which has actually been passed, not merely from a sentence which is anticipated. An extra-judicial appeal is an appeal from some official act, which may be either an act done or an act anticipated (126), such as an election, a postulation, a provision (127).

(122). Can. 6. (123). Can. 17.

(124). Cod. I. 1 Tit. IV. De episcopali audientia.

(125). Concil. Nic. A.D. 325, Can. 5 sanctions an extra-judicial appeal from the bishop's excommunication. Alexander III. in Decret. Lib. II. Tit. XXVIII. c. 5 : The sacred canons permit appeals out of judgment. Alexander III. *Ibid.* c. 12 says appeals may be made as well before as after contestation. Clemens III. *Ibid.* c. 38 directs appeals not to be received except (1) either from a grievance, or (2) from an unjust condemnation. 23 Hen. VIII. c. 9 allows extra-judicial appeals. Stephen's Eccl. Stat. 411.

(126). Innocent III. to Bishops of Rochester and London in Decret. Lib. II. Tit. XXVIII. c. 51 mentions an appeal by the Abbot of Canterbury to prevent his being molested in the possession of a Church. Boniface VIII. in Sext. Lib. II. Tit. XV. c. 8; Concil. Vien. A.D. 131, in Clem. Decr. Lib. II. Tit. XII. c. 3. Lynd. 106 mentions the issue of a decree of sequestration without a citation. Craisson, § 5974.

(127). Boniface VIII. in Sext. Lib. II. Tit. XV. c. 8; Innocent III. in

An extra-judicial appeal is, therefore, rather of the nature of a motion introducing a cause than of an appeal (128), and has place where no controversy has been introduced before a judge.

25. Judicial appeals are allowed on three grounds: (1) to correct the unfairness of an unjust judge (129); (2) to set right a judge's sentence which exceeds the law of the Church (130); and (3) to enable one who through ignorance has not had justice done to his cause in the first instance to obtain justice by a second instance (131). An appeal is, therefore, open not only to the party cast in a suit, but to all and any who have an interest in it (132); but when several persons have a like interest, the appeal of one settles the rights of the others (133).

26. By mediaeval practice, appeals are allowed on technical as well as on substantial grounds (134), and a judge is bound to respect even what seems to him frivolous appeals (135); but appeals are not allowed (1) when the party defeated has in any way acquiesced in the sentence (136), or has undertaken to acquiesce in it (137); (2) in disciplinary causes, when crime is

Decret. Lib. I. Tit. VI. c. 21; Concil. Lugdun. A.D. 1274, in Sext. Lib. I. Tit. VI. c. 1; Boniface VIII. *Ibid.* c. 19, 30.

(128). Alexander III. in Decret. Lib. II. Tit. XXVIII. c. 5 calls them provocationes ad causas, potius quam appellationes.

(129). Concil. Carthag. III. A.D. 397, Can. 10 ap. Gratian Caus. II. Qu. VI. c. 37; Pseudo-Isidor. *Ibid.* c. 21; Lynd. 290, 133, 124, 208; Ayliffe 76.

(130). Alexander III. to Archbishop of Canterbury in Decret. Lib II. Tit. XXVIII. c. 20.

(131). Ayliffe 76.

(132). Gratian Caus. II. Qu. VI. c. 30; Ayliffe 73; Innocent III. in Decret. Lib. I. Tit. VI. c. 16 forbids one elected, who has renounced his own election, afterwards to appeal to prevent another's election.

(133). Gregory IX. in Decret. Lib. II. Tit. XXVIII. c. 72.

(134). Alexander III. in Decret. Lib. II. Tit. XXVIII. c. 11.

(135). Alexander III. *Ibid.* c. 19.

(136). As by continuing to litigate before the same judge, which is equivalent to renouncing the appeal, according to Urban III. in Decret. Lib. I. Tit. XXIX. c. 20; Innocent III. *Ibid.* c. 54; Boniface VIII. in Sext. Lib. II. Tit. XV. c. 8; Ayliffe 84.

(137). Alexander III. to Archbishop of Canterbury in Decret. Lib. II. Tit. XXVIII. c. 20.

notorious (138), or has been confessed (139), or when the appeal is made for the sole purpose of gaining delay (140); but they are allowed to correct an unjust condemnation, or a sentence of excessive punishment (141). They are also not allowed (142) in executory causes, except to remedy an excess committed in the execution itself. They are, however, permitted in causes which have been committed, as it is said, *appellatione remota* (143), or *appellatione postposita* (144), *i.e.*, without regard for appeal (145),

(138). Alexander III. *Ibid.* c. 13 and 14, but warns the Archbishop of Toledo not to accept things as notorious which are not notorious. *Id.* A.D. 1169, *Ibid.* c. 32.

(139). Alexander III. in Decret. Lib. II. Tit. XXVIII. c. 5; *Id. Ibid.* c. 13; *Id. Ibid.* c. 3: Since the remedy of appeal is not designed to assist those who transgress the rule of religion and order, . . . do not on that account hesitate to correct and chastise him. *Id.* to the Bishop of Winchester c. 22; Concil. Lat. III. A.D. 1179, *Ibid.* c. 26: Let not subjects, when corrected, break out into the voice of appeal. Alexander III. A.D. 1169, *Ibid.* c. 32: Let not abbots who have been publicly convicted, and then, when pressed in chapter, refuse to resign, be allowed to appeal. Concil. Lat. IV. A.D. 1215, *Ibid.* c. 61.

(140). Concil. Milev. A.D. 416, ap. Gratian Caus. II. Qu. VI. c. 35; Concil. Afric. *Ibid.* c. 39. Pseudo-Isidor. *Ibid.*: Also in criminal causes there may be an appeal, nor may the voice of appeal be denied to one who lies under sentence of punishment. Alexander III. in Decret. Lib. II. Tit. XXVIII. c. 3; Concil. Lat. III. A.D. 1179, Can. 6, *Ibid.* c. 26: Let not subjects break forth into the voice of appeal against ecclesiastical discipline. But if any one believes that necessity obliges him to appeal, let a competent term be assigned him to prosecute his appeal. Clemens III. *Ibid.* c. 38; Stephen's Eccl. Stat. 146 observes that the archbishop's inhibition to the inferior judge was a frequent ground of complaint in such cases.

(141). Alexander III. in Decret. Lib. II. Tit. XXVIII. c. 29.

(142). Innocent III. in Decret. Lib. II. Tit. XXVIII. c. 43: There lies no appeal from execution agents unless they exceed the proper limit in execution; and Tit. XXVII. c. 15; Ayliffe 84.

(143). Alexander III. to Bishop of Worcester, *Ibid.* Lib. II. Tit. XXVIII. c. 9; Lucius III. to Walter, Bishop of Lincoln, *Ibid.* c. 36; Innocent III. to Bishop of Ely, A.D. 1204, *Ibid.* c. 53, says the phrase *appellatione remota* excludes every kind of appeal except what is specially allowed by law. Gregory IX. *Ibid.* c. 71.

(144). Innocent III. A.D. 1204, *Ibid.* Lib. III. Tit. XXIV. c. 6.

(145). Lucius III. to Bishop of Lincoln, *Ibid.* Lib. II. Tit. XXVIII. c. 36; Gregory IX. *Ibid.* c. 71; Eccles. Courts Commission, 1883, vol. II. p. 95.

the effect of the clause being not to prevent an appeal by way of devolution, but to prevent an appeal having a suspensory effect on the sentence (146).

27. Judicial appeals may be made either (1) before final sentence, when they are termed appeals from a judicial grievance or ruling (147); or (2) after final sentence, when they are termed appeals in the principal cause (148). Before final sentence they may be made (1) from a judicial grievance either sustained or threatened, but not when there is only a surmise that one is likely to happen, unless it is one which cannot be redressed by sentence (149); or (2) from an interlocutory sentence deciding some preliminary or incidental matter in a cause. Appeals made after final sentence must always be from the sentence itself, but such appeals may be made implicitly as well as explicitly (150). They may, moreover, be made from any and every judge, excepting (1) the highest of all, and excepting (2) arbitrators selected by both parties of free choice (151).

(146). Innocent III. to Bishop of Ely *Ibid.* c. 53; Craisson, § 657.

(147). Alexander III. in Decret. Lib. II. Tit. XXVIII. c. 12; Concil. Lugdun. A.D. 1245, in Sext. Lib. II. Tit. XV. c. 1, says super interlocutoria vel gravamine aliquo. Boniface VIII. *Ibid.* Tit. VI. c. 1. The term *oppressi*, ap. Gratian Caus. II. Qu. VI. c. 3 and 17, is explained to refer to appeals before sentence. Const. 6 Mepham. A.D. 1328: A statute is said to have been made forbidding appeals from judicial grievances before final sentence [no such statute exists, but such was the rule of the civil law, and a constitution of Archbishop Winchelsea, 2 Spelman, p. 419, forbids appeals in causes of correction, except from a definitive sentence]. We wholly forbid this statute, as being made for depriving the oppressed of the remedy of appeal. Lynd. 115; Ayliffe 74.

(148). Ecclesiastical Courts Commission Report, 1883, p. 183.

(149). Alexander III. to Archbishop of Canterbury and Bishop of Worcester in Decret. Lib. II. Tit. VIII. c. 1, allows an appeal because the citatory term was too short. Innocent III. *Ibid.* Tit. XXVIII. c. 49, because the citation was too uncertain.

(150). As when a priest put himself under the protection of the metropolitan without specifically using the word appeal in Decret. Lib. II. Tit. XXVIII. c. 39, or undertook a mission to the pope, *Ibid.* c. 52, addressed to the monks of Canterbury, or by a protest if he fears to appeal. Gregory IX. *Ibid.* c. 73.

(151). Craisson, § 658.

28. To render an appeal before final sentence admissible (152), there must (1) be a lawful and specific ground of grievance, such as the threat of a judge (153) or his refusal to receive an exception (154); (2) the appeal must be made in writing, setting forth specifically the grievance which is the subject of appeal (155). A general appeal from all grievances without naming them is not admissible (156). (3) The appeal must be made within the ten or fifteen days allowed by law (157), and letters dimissory must be demanded within thirty days (158). Before contestation of suit such an appeal can only be allowed for a reasonable cause (159), and the cause, which must be stated to the judge appealed from, must be proved before the judge of appeal (160). If the ground of appeal is found to be untenable, the cause is sent back to the judge appealed from (161). One who is dispossessed after appealing must be restored to possession before the adversary can be heard against the appeal (162).

29. Appeals from interlocutory sentences differ in many respects from appeals made from final sentences. (1) They

(152). Concil. Lat. IV. A.D. 1215, in Decret. Lib. II. Tit. XXVIII. c. 59.

(153). Concil. Vien. A.D. 1311, in Clem. Lib. II. Tit. XII. c. 3; Lynd. 115.

(154). Alexander III. *Ibid.* c. 10; Innocent III. to the bishop, dean, and precentor of Hereford, *Ibid.* c. 48; Concil. Lat. IV. *Ibid.* c. 59; Gregory IX. *Ibid.* c. 70. See *Acts in Judgment*, notes 92, 217, and 279.

(155). Honorius III. *Ibid.* c. 63; Gregory IX. *Ibid.* c. 70; Ayliffe 83.

(156). Alexander III. *Ibid.* c. 18.

(157). Boniface VIII. in Sext. Lib. II. Tit. XV. c. 8: Desiring to put an end to a long-standing controversy we decree that from elections, postulations, provisions, and other extra-judicial acts whatsoever, in which an appeal is allowed, whoever believing himself aggrieved by such acts, wishes to have the grievance remedied by way of appeal, must appeal within ten days, if he wishes to appeal, from the time when he became aware of it. 24 Hen. VIII. c. 12, allows fifteen days in this country.

(158). Dig. Lib. 49, Tit. VI. ap. Gratian Caus. II. Qu. VI. c. 31.

(159). Concil. Lat. IV. A.D. 1215, Can. 35, *Ibid.* c. 59. See note 167.

(160). Gregory IX. *Ibid.* c. 70, § 3.

(161). Clemens III. in Decret. Lib. II. Tit. XXVIII. c. 38; Clemens IV. in Sext. Lib. II. Tit. XV. c. 5.

(162). Innocent III. to Bishops of Rochester and London, A.D. 1205, in Decret. Lib. II. Tit. XXVIII. c. 51.

do not suspend the jurisdiction of the judge appealed from unless the superior grants an inhibition, whereas appeals from final sentences do (163); nor is inhibition granted in such cases as a matter of course, but only if good ground for it is shown (164). (2) They expire naturally if the judge alters his interlocutory ruling (165), whereas a judge cannot alter a final sentence. (3) They must always be in writing, and specify the precise ground of appeal (166), whereas appeals from final sentences may be made orally in court, and need specify no grounds. (4) They cannot be sustained at the hearing on any other ground than that named in the appeal (167), whereas appeals from final sentences may allege new grounds, and justify them with fresh proofs (168).

30. The effect of an appeal from a judicial sentence is threefold: (1) It suspends the operation of the sentence appealed from, and does away with the presumption in its favour (169),

(163). Boniface VIII. in Sext. Lib. II. Tit. XV. c. 7; Devoti Lib. III. Tit. XV. § 3.

(164). Alexander III. in Decret. Lib. II. Tit. XXVIII. c. 3; Sext. Lib. II. Tit. XV. c. 5.

(165). Concil. Lat. IV. A.D. 1215, in Decret. Lib. II. Tit. XXVIII. c. 60.

(166). Gonzalez states that before the time of Innocent III. interlocutory and all other appeals might be freely made by virtue of Pseudo-Isidor. ap. Gratian Caus. II. Qu. VI. c. 3: Omnis oppressus libere sacerdotum appellet judicium, but that the Fourth Lateran Council, A.D. 1215, in Decret. Lib. II. Tit. XXVIII. c. 61, limited them to cases in which there was probabilis causa appellationis; and that Concil. Lugdun. A.D. 1245, in Sext. Decr. Lib. II. Tit. XV. c. 1, required them to be in writing and to specify the ground.

(167). Clem. Decr. Lib. II. Tit. XII. c. 5.

(168). Alexander III. to Archbishop of York in Decret. Lib. VI. Tit. XXVIII. c. 16; Ayliffe 85.

(169). Alexander III. to Bishop of Exeter and Dean of London, *Ibid.* c. 1; *Id.* to Bishop of Norwich, *Ibid.* c. 4; S. Leo *Ibid.* c. 17, authorises the Archbishop of Canterbury to reinstate one who has been disturbed from his benefice pending an appeal. Devoti Inst. Lib. III. Tit. XV. § 15; Ayliffe 73. Lynd. 106 says that if an appeal is abandoned the sentence revives from the date when it was passed. If the sentence is confirmed on appeal, it takes effect from the time of confirmation. *Ibid.* 107.

unless it be a summary sentence given in visitation (170), or a declaratory sentence of excommunication or interdict already incurred *ipso jure* (171), or a sentence in a cause which has been committed without regard for appeal (*appellatione remota*). (2) It terminates the jurisdiction of the judge appealed from, either by the judge's own issue of letters dimissory, or by the superior's inhibition, so that any act attempted by him in the interval is of no force (172); but it does not prevent the same person being punished by the same judge for offences subsequently committed (173). (3) It causes a devolution of the cause (174), so that the future decision and execution of the sentence rests with the superior judge, except by consent of the parties (175). Hence, although a sentence which is a nullity in itself requires no appeal, yet by means of the appeal the superior judge is enabled to judicially declare it to be a nullity (176).

31. An appeal must always be made and followed up within the time allowed by law. This is represented by four periods, called the four fatal days or terms (177). The first fatal is the

(170). Alexander III. in Decret. Greg. IX. Lib. I. Tit. XXXI. c. 3; Craisson, § 650, 655.

(171). Alexander III. to Bishop of Norwich in Decret. Lib. II. Tit. XXVIII. c. 37. *Id.* to Archbishop of York *Ibid.* c. 16, and to Archbishop of Canterbury *Ibid.* c. 25, allows one excommunicate to be meantime absolved *ad cautelam.* Coelestin III. *Ibid.* c. 40, states that a conditional sentence of excommunication is suspended by the appeal.

(172). Innocent III. *Ibid.* c. 55, 56; Boniface VIII. in Sext. Lib. II. Tit. XV. c. 7.

(173). Alexander III. to Bishop of Winchester, *Ibid.* c. 22.

(174). Gregory IV. A.D. 832, ap. Gratian. Caus. II. Qu. VI. c. 11; Pseudo-Isidor. *Ibid.* c. 12; Nicolaus I. A.D. 865, *Ibid.* c. 13; Innocent III. in Decret. Lib. II. Tit. XXIV. c. 19; Coelestin III. *Ibid.* Tit. XXVIII. c. 42 and 58, but not if the appeal is made *omisso medio.* Honorius III. *Ibid.* c. 66.

(175). Alexander III. in Decret. Lib. II. Tit. XXVIII. c. 35.

(176). An appeal may be brought from a nullity at any time within thirty years, and although it is not necessary to appeal from a nullity, yet by not appealing explicitly, or implicitly by protesting, a *gravamen facti* may be established. Ayliffe 84.

(177). The term is used in Leg. 31 C. de Appellat. Gratian Caus. II. Qu. VI. c. 41; Devoti Inst. Lib. III. Tit. XV. § 8.

time within which notice must be given of appeal. The second, the time within which letters dimissory, or letters of despatch, called *apostles*, must be obtained. The third, the time within which the appeal must be introduced before the judge of appeal; and the fourth fatal, the time within which it must be followed up and prosecuted to a conclusion.

32. Notice of appeal from a final sentence may be given either by word of mouth, whilst the judge is sitting in court, or afterwards by means of a public instrument executed before a notary or authentic person (178). It is sufficient to hand in to the judge a notice of appeal, without reading it out before him (179). Formerly notice of appeal was required to be given within two days (180). The time was afterwards extended to ten days (181), but by English custom and statute fifteen days are allowed (182). Time begins to count from the publication of the sentence (183), or from the date of the grievance complained of, if the appeal is from a grievance (184); but if the latter is a continuing grievance, the right of appeal continues to run (185).

33. Formerly the appellant was allowed five days (186) within

(178). Gratian Caus. II. Qu. VI. c. 31 gives the form.

(179). Ayliffe 83; Boniface VIII. in Sext. Lib. II. Tit. XV. c. 9.

(180). This was the rule of the civil law before Justinian. Leg. 1, § 3, 6, 11; Gratian Caus. II. Qu. VI. c. 28.

(181). Justinian Novel 23, c. 1, ap. Gratian Caus. II. Qu. VI. c. 28; Innocent III. in Decret. Greg. IX. Lib. II. Tit. XXVII. c. 15; Ayliffe 80.

(182). 24 Hen. VIII. c. 12, sec. 6, allows an appeal "if a matter be commenced before the bishop diocesan or his commissary, from the bishop diocesan or his commissary, within fifteen days next ensuing the judgment or sentence thereof there given to the archbishop." In case the matter were commenced before the archdeacon of any archbishop or his commissary, sec. 7 gives the aggrieved party an appeal to the Court of Arches, or Audience of the same bishop, within fifteen days, and from the Court of the Arches or Audience within fifteen days to the archbishop of the same province.

(183). Devoti Inst. Lib. III. Tit. XV. § 9; Gratian Caus. II. Qu. VI. c. 29.

(184). Concil. Vien. in Clem. Lib. II. Tit. XII. c. 3.

(185). Ayliffe 80.

(186). Gratian Caus. II. Qu. VI. c. 22; c. 24: Let letters of despatch (dimissoriae), which are popularly called "apostles" [letters of despatch from

which to obtain from the judge letters of despatch (187), commonly called apostles (188). The time was afterwards extended to thirty days (189), which constitute the second fatal term. As the judge who is appealed from is bound to give such letters without being asked for them on receiving notice of appeal, it suffices to have asked for them instantly (190). These letters, if issued with the judge's approval, are called letters *dimissory;* if given from respect for a superior, letters *deferential* (191); if given contrary to the judge's opinion, letters *refutatory;* if given by a judge with an open mind, letters *testimonial;* and if given by the express wish of both parties, letters *conventional* (192).

34. When an appeal has been interposed, it must next be brought to the knowledge of the judge of appeal. This is termed the introduction of the appeal, and is effected by presenting the libel to the judge of appeal, together with a petition that it may be received, that the opponent may be cited to appear to it, and that the inferior judge may be inhibited from proceeding further in the cause. No definite time is prescribed for introducing an appeal, but a time is generally named by the party appellant (193), or by the judge appealed from (194), at the expiration of which he will resume his office, if the appeal has not been introduced (195). This is called the third fatal term.

ἀποστέλλω, I send], be sent by the judge appealed from to the judge who will hear the appeal, the demand and acceptance of which must be had within five days.

(187). Gratian Caus. II. Qu. VI. c. 24; c. 31 gives the form for them. Concil. Vien. A.D. 1311, in Clem. Decret. Lib. II. Tit. XII. c. 1; Lynd. 115; Sext. Decret. Lib. II. Tit. XV. c. 6.

(188). Concil. Lugdun. A.D. 1245, in Sext. Lib. II. Tit. XV. c. 1 and 4.

(189). Boniface VIII. in Sext. Lib. II. Tit. XV. c. 6.

(190). Gratian Caus. II. Qu. VI. c. 31; Boniface VIII. in Sext. Lib. II. Tit. XV. c. 6; Concil. Vien. A.D. 1311, in Clem. Decr. Lib. II. Tit. XII. c. 2.

(191). Concil. Lugdun. A.D. 1245, in Sext. Lib. II. Tit XV. c. 1, says ex superioris reverentia.

(192). Devoti Inst. Lib. III. Tit. XV. § 10.

(193). Alexander III. to Bishop of Norwich in Decret. Greg. IX. Lib. II. Tit. XXVIII. c. 4; Innocent III. *Ibid.* c. 57, 64.

(194). Alexander III. *Ibid.* c. 4, 33, 44.

(195). Alexander III. *Ibid.* c. 27, 28, says that the judge's jurisdiction revives if the appeal is deserted. *Id. Ibid.* c. 33; Ayliffe 80.

35. The fourth fatal term is the period allowed to the appellant to follow up and finish his appeal. For this one year (196) is usually allowed, but a second year may be allowed for good cause (197), counting from the day of the interposition of the appeal inclusive (198); and in an urgent case the term may be abbreviated by the judge (199). In fixing the term the judge appealed from has no voice (200); this rests with the judge appealed to. The term fixed counts, nevertheless, as a term peremptory, so that if either party fails to appear, proceedings may go forward in his absence, as though he had been peremptorily cited (201).

36. All appeals ought to proceed regularly, *i.e.*, from each jurisdiction to the one next above it, without the omission of any (202), unless there is a custom to the contrary (203). Thus an appeal goes regularly from the archdeacon to the bishop, from the bishop to the metropolitan (204), from the metropolitan

(196). Concil. Carthag. v. Can. 12, A.D. 401, ap. Gratian Caus. XI. Qu. III. c. 36, requires clergy to prosecute an appeal against all unjust accusations within a year. Gelasius, A.D. 494, *Ibid.* c. 37; Authen. *Ibid.* c. 41; Alexander III. in Decret. Lib. II. Tit. XXVIII. c. 5; Concil. Vien. A.D. 311, in Clem. Lib. II. Tit. XII. c. 3; Lynd. 106.

(197). Authen. ap. Gratian Caus. II. Qu. VI. c. 41; Alexander III. in Decret. Lib. II. Tit. XXVIII. c. 5 and 8; Innocent III. *Ibid.* c. 57.

(198). Alexander III. in Decret. Lib. II. Tit. XXVIII. c. 8; Ayliffe 82.

(199). Innocent III. A.D. 1209, *Ibid.* c. 57.

(200). Innocent III. to Bishop of Evreux, *Ibid.* c. 50.

(201). Innocent III. *Ibid.* c. 44 and 58.

(202). As early as the ninth century, the popes claimed to receive appeals direct (*omissis mediis*). Nicolaus I. A.D. 865, ap. Gratian Caus. II. Qu. VI. c. 13, censures Hincmar of Rheims for hearing the case of Bishop Rothard, who had appealed directly to the pope. Devoti Inst. Lib. III. Tit. XV. § 24 states that the only person over bishops, by divine appointment, is the pope; patriarchs, primates, and metropolitans, being his officers; therefore, appeals may be made to him direct.

(203). Concil. Lugdun. A.D. 1245, in Sext. Lib. II. Tit. XV. c. 3.

(204). Const. 8 Clarendon, A.D. 1164: If appeals arise, they ought to proceed from the archdeacon to the bishop, from the bishop to the archbishop, and lastly to the king (if the archbishop fail in doing justice), so that the controversy be ended in the archbishop's court by a precept from the king, and so that it go no further without the king's consent. 24 Hen. VIII. c. 12 sec. 5.

to the exarch of the greater administrative district, or primate, as he is termed in the West; from the primate to the patriarch (205), and from the patriarch to an œcumenical council, or the pope (206). In this country, no appeals are allowed by the law of the land to be taken out of the country in mixed or ecclesiastical causes, without the leave of the crown (207).

37. The Act of Supremacy, 26 Henry VIII. c. 1, which substituted the sovereign for the pope as Supreme Head of the Church in this country, without supplying him with the necessary ecclesiastical machinery, practically exempted the bishops of the two English provinces from the supervision of the collective episcopate, which had heretofore, in the intervals between general councils, been exercised by the pope, as representative of the whole episcopal body and president of a permanent committee of revision of the whole Church.

38. In place of appeals to the pope, the statute 25 Henry VIII. c. 19 permitted appeals from the archbishop's court to the king in Chancery, the practice being for the Lord Chancellor, on petition, to appoint certain delegates to hear the

(205). Concil. Chalcedon. A.D. 451, Can. 9 : If any clergyman has a suit against another clergyman, let him not leave his own bishop and run to the secular courts of justice, but let him first try the question before his own bishop, or with the consent of the bishop, before those persons whom both parties shall choose to have the hearing of the cause. . . . But if a clergyman has any matter against his own bishop, let it be decided by the synod of the province ; but if any bishop or clergyman has a controversy against the metropolitan, let him have recourse either to the exarch of the administrative district [primate], or to the [patriarchal] throne of the imperial city of Constantinople.

(206). On the disputed question whether an appeal lies from the pope to a general council, see Devoti Inst. Lib. III. Tit. XV. § 18.

(207). Const. 8 Clarendon, A.D. 1164 ; 24 Hen. VIII. c. 12 directs that all appeals in "all causes testamentary, causes of matrimony and divorces, rights of tithes, oblations, and obventions" shall be definitively or finally ordered in the archbishop's court. This statute was amended by 25 Hen. VIII. c. 19 in two ways : (1) By sec. 5 these provisions were extended to "any manner of appeals, of what nature or condition whatsoever they be of." (2) Sec. 4 provided an appeal from the archbishop's court, for lack of justice, "to the king's majesty in the king's court of chancery," whereby the jurisdiction of the court of delegates was first created.

appeal, who were called the Court of Delegates. If their decision did not give satisfaction, a commission of review might be granted under the great seal, on petition to the king in council, "to revise, review, and rehear the case."

39. The Act 2 and 3 William IV. c. 92, having in view the settlement of disputes rather than the conscientious desire of the Church to do justice to all men, prohibited the granting in future of commissions of review, and the Act 3 and 4 William IV. c. 41 transferred the powers and jurisdiction of the Court of Delegates to the Judicial Committee of the Privy Council. An entirely new lay court was thus established as the supreme court of appeal in matters ecclesiastical in this country, *i.e.*, in matters concerning spiritual foundations, and the rights and duties of their members, which followed the received principles of the secular courts, designed to promote the convenience of the public and promptness of decision, rather than the long-suffering and charitable discipline of the Church, which aims at reproducing upon earth the everlasting justice and mercy of heaven.

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*This Index does not pretend to contain an exhaustive list of the authorities quoted in the notes, to most of which only one reference is given to fix their date.*


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